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Fielding, Fred - General Files

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Folder Title:

Libby [Folder 2]: [Correspondence] [Folder 2]

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Email	Supervised Release Decision - To: Fred F. Fielding - From: Albert C. Lambert	1	07/12/2007	P5; P6/b6;
002	Court Filing	Memorandum Opinion	10	07/12/2007	Court Sealed;
003	Court Filing	Government's Position Statement	10	N.D.	Court Sealed;
004	Letter	Re: United States v. Libby, Crim. No. 05-394 (RBW) - To: The Honorable Patrick J. Fitzgerald - From: Fred F. Fielding	2	07/06/2007	P5;
005	Email	Pardon Hearing - To: Fred F. Fielding, et al - From: Kenneth K. Lee	1	03/28/2007	P5;
006	Email	RE: Pardon Hearing - To: Fred F. Fielding, et al - From: William K. Kelley	3	03/28/2007	P5;

COLLECTION TITLE:

Counsel's Office, White House

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Fielding, Fred - General Files

FOLDER TITLE:

Libby [Folder 2]: [Loose Documents] [Folder 2]

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11703

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

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007	Email	RE: Pardon Hearing - To: Fred F. Fielding, et al - From: Kenneth K. Lee	1	03/28/2007	P5;
008	Email	FW: Draft Letter re Libby Subpoena [with attachment] - To: Fred F. Fielding - From: William K. Kelley	3	02/12/2007	Court Sealed;
009	Letter	[Letter from Paul R. Eckert - To: Kathleen Kedian - From: Paul R. Eckert	2	02/12/2007	P5; P6/b6;

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Libby [Folder 2]: [Loose Documents] [Folder 2]

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Program Statement

OPI: CPD
NUMBER: 5880.28
DATE: CN-06, 7/19/99
SUBJECT: Sentence Computation
Manual (CCA of 1984)

1. **PURPOSE AND SCOPE.** This Program Statement transmits the "Sentence Computation Manual" which establishes the policies and procedures for the computation of sentences imposed for violations of the United States Code under the statutes of the Comprehensive Crime Control Act of 1984 (CCCA).

On October 12, 1984, President Reagan signed the Comprehensive Crime Control Act of 1984 (CCCA) into law. Two major components of this law, the Sentencing Reform Act of 1984 (SRA) and the Insanity Reform Act of 1984, completely restructured the sentencing guidelines and policies of the United States Courts.

After the effective date of the SRA on November 1, 1987, a number of United States Court decisions found all or parts of the SRA unconstitutional. As a result, the SRA was implemented nationally in various ways.

On January 18, 1989, in Mistretta v. U.S., the Supreme Court considered the constitutionality of the sentencing guidelines and ruled that the guidelines were constitutional. This Manual provides instructions for computing sentences imposed under the CCCA both before and after the **Mistretta** decision.

2. **DIRECTIVES AFFECTED**

a. **Directives Rescinded.** None.

b. **Directives Referenced.** None.

3. **STANDARDS REFERENCED**

a. American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: 3-4094

b. American Correctional Association 2nd Edition Standards for Administration of Correctional Agencies: 2-CO-1E-05

c. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-1E-03

d. American Correctional Association 3rd Edition Standards for Adult Boot Camp Programs: 1-ABC-1E-09

4. **MCC/MDC/FDC/FTC PROCEDURES.** Procedures in this Program Statement apply to Metropolitan Correctional Centers, Metropolitan Detention Centers, Federal Detention Centers and Federal Transportation Centers.

5. **DISTRIBUTION.** At a minimum, a copy of this Manual will be placed with the Regional Inmate Systems Manager, each Community Corrections Manager, the Inmate Systems Manager and all other staff having responsibility for sentence computation.

/s/

Kathleen Hawk Sawyer
Director

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person (absconder) is apprehended. This offense, therefore, is treated in the same manner as a conspiracy offense.

Official detention. "Official detention" is defined, for purposes of this policy, as time spent under a federal detention order. This also includes time spent under a detention order when the court has recommended placement in a less secure environment or in a community based program as a condition of *presentence detention. In addition, on occasion it is necessary for the court to order placement in a less secure environment or in a community based program (including D.C. Department of Corrections' programs such as work release) because of overcrowding in the local place of detention. A person under these circumstances remains in "official detention", subject to the discretion of the Attorney General and the U.S. Marshals' Service with respect to the place of detention. Those defendants placed in a program and/or residence as a condition of detention are subject to removal and return to a more secure environment at the discretion of the Attorney General and the U.S. Marshals' Service, and further, remain subject to prosecution for escape from detention for any unauthorized absence from the program/residence. (If there is any question as to whether such a defendant was in fact under the jurisdiction of the U.S. Marshals' Service, i.e., in the custody of the Attorney General, staff shall contact the appropriate U.S. Marshal for verification.) Such a defendant is not eligible for any credits while released from detention.

In Reno v. Koray, 115 S.Ct 2021 (1995), the U.S. Supreme Court held that time spent under restrictive conditions of release (including time spent in a community treatment center (CCC) or similar facility) was not official detention entitling an inmate to prior custody time credit under 18 U.S.C. § 3585(b). The court found that the interaction of the Bail Reform Act and 18 U.S.C. § 3585(b) supported the Bureau of Prisons' interpretation that a defendant is **either released (with no credit for time under conditions of release) or detained (with credit for time in official detention)**.

Koray has also overruled Brown v. Rison, 895 F.2d 895 (9th Cir. 1990). As a result, the awarding of presentence time credit under 18 U.S.C. § 3568 for time spent under restrictive conditions shall also be discontinued. Brown is the Ninth Circuit case that required the Bureau of Prisons to give time credit to a sentence for time spent in a CCC or similar facility.

The Koray decision means, therefore, that time spent in residence in a CCC or similar facility as a result of the Pretrial Services Act of 1982 (18 U.S.C. § 3152-3154), or as a result of a condition of bond or release on own recognizance (18 U.S.C. § 3141-3143, former 3146), or as a condition of parole, probation or supervised release, is not creditable to the service of a subsequent sentence. In addition, a release condition that is "highly restrictive," and that includes "house arrest", "electronic monitoring" or "home confinement"; or such as requiring the defendant to report daily to the U.S. Marshal,

U.S. Probation Service, or other person; is not considered as time in official detention. **In short, under Koray, a defendant is not entitled to any time credit off the subsequent sentence, regardless of the severity or degree of restrictions, if such release was a condition of bond or release on own recognizance, or as a condition of parole, probation or supervised release.**

Any sentence computed for the first time before June 5, 1995, and that sentence reflects an award of prior custody time credits for time spent in a CCC or similar facility **shall** retain any credits applied, regardless of any sentence recomputation (e.g., for an addition or loss of prior custody time credits or modification of sentence, or as the result of a vacated sentence, including a sentence that was imposed after a retrial) that occurs on or after June 5, 1995.

Any sentence, computed for the first time on or after June 5, 1995, which reflects an award of prior custody time credits for time spent in a CCC or similar facility under conditions of release, that was not the result of a court order, shall be recomputed to void such credit.

If it is discovered during a sentence recomputation on or after June 5, 1995, that time was spent in a CCC or similar facility that should have been awarded as the result of a sentence computation performed prior to June 5, 1995, but was not awarded, such time **shall not** be given on the recomputation unless the court had ordered that such credit be given.

CCC or similar facility time that was awarded to a sentence that was calculated for the first time prior to June 5, 1995 because the inmate was committed to the Bureau of Prisons in error (e.g., premature release from non-federal custody or U.S. Marshals' failure to return an inmate to the proper non-federal jurisdiction after release on a writ) shall be canceled if the subsequent recomputation occurs on or after June 5, 1995, unless the court had ordered that such credit be given.

Any court order, regardless of when it was issued, that awards prior custody time credits for time spent in a CCC or similar facility, or for time spent under other forms of restrictive conditions of release, for a sentence computed for the first time on or after June 5, 1995, shall be referred to the RISA. The RISA and the Regional Counsel shall contact the Assistant U.S. Attorney who prosecuted the case and request that a Motion for Reconsideration or an appeal be filed based on the decision in Koray. The inmate shall retain the credit as long as the court order remains in effect.

The USM-129 will on occasion show that a defendant was in custody for one day. In such a case, staff may credit that one day without further verification.

If an inmate states that he was in prior custody for a day, or days, that was not shown on the USM-129, then staff shall attempt to verify the inmate's claim with the arresting agency even if the PSI substantiates the claim. These situations usually arise when a defendant is issued a summons to appear before the court in a criminal matter. After the hearing, if the

defendant returns to the community **without** being placed on bail or on "own personal recognizance," then that defendant is not entitled to that day in court as a day in "official detention" on a subsequent sentence even if required to report to the U.S. Marshals' Service for processing (fingerprinting, photographing, etc.). If the defendant is released on bail or on "own personal recognizance" then that day is treated as a day in official detention and shall be awarded as a day of prior custody time credit. *

Official detention does not include time spent in the custody of the U.S. Immigration and Naturalization Service (INS) under the provisions of 8 U.S.C. § 1252 pending a final determination of deportability. An inmate being held by INS pending a civil deportation determination is not being held in "official detention" pending criminal charges. (See Ramirez-Osorio v. INS, 745 F.2d 937, rehearing denied 751 F.2d 383 (5th Cir. 1984); Shoae v. INS, 704 F.2d 1079 (9th Cir. 1983); and Cabral-Avila v. INS, 589 F.2d 957 (9th Cir. 1978), cert. denied 440 U.S. 920, 99 S.Ct 1245, 59 L.Ed2d 472 (1979).)

A sentence imposed by a court for "**Time Served**," means that all time spent in official detention (prior custody time), as a result of the offense for which sentence was imposed, is included in the "Time Served" sentence which the court imposed and cannot be awarded to any other sentence.

Time spent serving a **civil contempt** sentence prior to trial and/or sentencing **does not** constitute presentence time credit toward the sentence that is eventually imposed.

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July 6, 2007

President George W. Bush
The White House
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear President Bush:

Like many Americans, I was troubled to learn of your decision to commute the sentence of Vice President Cheney's former Chief of Staff Scooter Libby. Mr. Libby was convicted of serious crimes and sentenced by a fair and well-respected federal Judge who termed the evidence of Mr. Libby's guilt "overwhelming." It was surprising indeed to learn that you had deemed Mr. Libby's sentence "excessive" even before any of his appeals had run.

As you may know, my committee is holding a hearing this Wednesday titled "The Use and Misuse of Presidential Clemency Power for Executive Branch Officials." At this hearing we hope to learn about some of the consequences of Mr. Libby's misconduct, and we will hear from sentencing experts and people affected by federal sentencing laws as to whether or not Mr. Libby's sentence can fairly be considered "excessive." We will also explore the grave questions that arise when the Presidential clemency power is used to erase criminal penalties for high-ranking executive branch employees whose offenses relate to their work for the President. While I recognize that the clemency power is a Presidential prerogative, your decision to commute Scooter Libby's sentence has proven highly controversial, with commentators suggesting that this act may have had the effect of removing any further incentive that Mr. Libby may have had to provide more complete information about the leak of information on Valerie Wilson's work as an intelligence agent and the role that your Vice President and you yourself may have played in that leak.

When President Clinton's pardon of Marc Rich stirred its own controversy back in 2001, former President Clinton took the forthright step of waiving Executive Privilege and permitting some of his closest aides to testify about the facts of the matter. On March 1, 2001, President Clinton's former Chief of Staff John Podesta, his former Counsel Beth Nolan, and one of his

President George W. Bush
Page Two
July 6, 2007

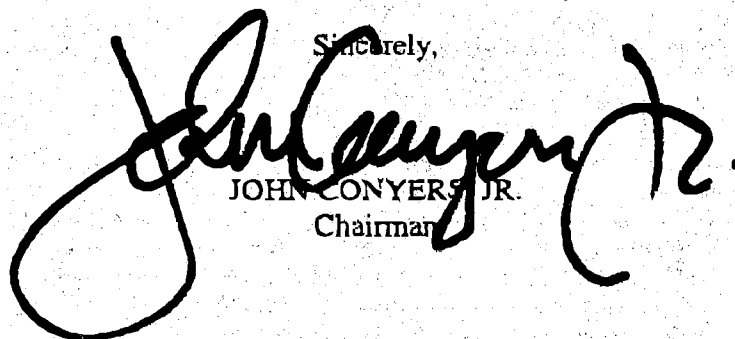
closest counselors Bruce Lindsay testified before Chairman Burton's House Government Reform Committee on this matter. As Chairman Burton acknowledged in his opening statement: "We asked the president not to claim executive privilege so his aides could testify, and he's done that, and that's a positive step." (Transcript of March 1, 2001 hearing of the House Government Reform Committee.)

It is in this spirit that I call on you too to waive Executive Privilege and provide the relevant documents and testimony of any relevant aides regarding the decision to commute Mr. Libby's sentence. Given that then President Ford testified before our committee in 1974 about his pardon of President Nixon, there is ample additional precedent for your taking such a step. Many questions remain unanswered. For example:

- What role if any, did Vice President Cheney play in the decision to commute the sentence of his own former aide?
- On what basis did you conclude that Mr. Libby's apparently ordinary sentence was "excessive"?
- Was any consideration given to the impact commutation would have on the possibility that Mr. Libby might yet decide to cooperate with the Special Prosecutor?
- Had any assurances previously been given to Mr. Libby - either before or after his false testimony - that he would be protected from jail time through clemency?
- What outsiders lobbied the administration for clemency, and was there any improper quid pro quo?

Thank you very much for responding to this request. I hope you will be able to provide the relevant documents and allow your aides to testify at our hearing next week or at some time in the near future.

Sincerely,



JOHN CONYERS JR.
Chairman

cc: The Honorable Lamar S. Smith, Ranking Republican

From: WW
To: House

LA ON

WH 606-6279

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Tenth Congress

FAX COVER SHEET

DATE: 7/9/07

TO: President Bush (via Candi)

FAX NO.: 456-1806

FROM: Congressman Conyers, Jr. Fax No.: (202) 225-4423

NUMBER OF PAGES IN THIS TRANSMISSION: 3 (including cover)

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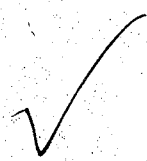
Fielding, Fred F.

From: White House News Update [News.Update@WhiteHouse.Gov]

Sent: Wednesday, March 28, 2007 6:49 AM

To: Fielding, Fred F.

Subject: WSJ - (Editorial) The Libby Precedent



The Libby Precedent

WSJ Editorial

If Senate Judiciary Chairman Patrick Leahy wants to investigate the Bush Administration's dismissal of eight U.S. attorneys, that's certainly his prerogative. But he and other Democrats determined to play up this faux scandal shouldn't be surprised if government officials decide they'd rather not step into this obvious perjury trap.

The Judiciary Committee is seeking testimony from, among others, Monica Goodling, the Justice Department's liaison to the White House. Democrats want to quiz Ms. Goodling on her communications with other Justice officials such as Deputy Attorney General Paul McNulty, who testified about the firings before the Senate committee in February. This week Ms. Goodling indicated she will exercise her Constitutional right to keep mum.

Sad to say, this is one more unfortunate result of the Beltway's modern habit of criminalizing political differences, a la the Scooter Libby travesty. Congress has the right to conduct oversight of the executive, and in a better world government officials would be willing to testify and give as good as they get. Thus would the public be educated about the facts and policy differences be aired.

But Ms. Goodling has been around, and she can see Democrats don't really want to know the truth; they want to shout "liar, liar" and set the stage to accuse Justice officials of criminal behavior. In a statement to the committee explaining her decision, Ms. Goodling said, "I have read public remarks by members of both the House and Senate Committees on the Judiciary in which those members have drawn conclusions about the subject matter and the testimony now under investigation by the Committee." We've read them, too.

Representative Linda Sanchez has already concluded that there have been "attempts to mislead the public on this issue." In a joint press conference, Senators Charles Schumer and Dianne Feinstein characterized Justice's testimony as "misleading statement after misleading statement -- deliberate misleading statements." Mr. Schumer is also a lawyer, and we reckon he deliberately chose that word "deliberate" as a prelude to charging criminal deception and keeping the issue alive long enough to help elect more Senate Democrats next year. (He runs the Senate Democratic campaign committee.)

Senator Leahy himself issued a press release asserting that Attorney General Alberto Gonzales and Mr. McNulty "failed to tell Congress the whole truth about this matter under oath." Now that these Democrats have reached a verdict, they want to hold the trial.

If anyone had any doubt about this criminalization game, it should have vanished late Monday with Senator Leahy's suggestion that Ms. Goodling's decision not to testify implies that she's done something wrong. "The American people are left to wonder what conduct is at the base of Ms. Goodling's concern that she may incriminate herself in connection with criminal charges if she appears before the committee

under oath," Mr. Leahy said.

But the only thing the American people might wonder about is why the Senator, a lawyer who should know better, has seen fit to bully an individual for doing nothing more than invoking her Fifth Amendment privilege against self-incrimination. Mr. Leahy's public smear prompted a rebuttal from Ms. Goodling's lawyer, John Dowd, who reminded the Senator that "the Fifth Amendment protects innocent persons who might otherwise be ensnared by ambiguous circumstances, as much as it protects those who may have done something wrong."

Count Ms. Goodling's silence as one more unintended consequence of the Scooter Libby case. Mr. Libby made the mistake of cooperating with the investigation into a leak he had nothing to do with, and he later found himself charged with perjury based on little more than conflicting memories of who said what and when. The prosecutor never even charged anyone for the leak that started it all.

There's no apparent underlying crime in this "scandal" either, but we'll bet more than one Democrat will soon be calling for a "special prosecutor" to investigate it nonetheless. The New York Times has already floated the idea, as usual. As Mr. Dowd put it in his letter to Mr. Leahy: "The potential for legal jeopardy for Ms. Goodling from even her most truthful and accurate testimony under these circumstances is very real. One need look no further than the recent circumstances and proceedings involving Lewis Libby."

If the probing Senators want to know why lawyers can't in good conscience advise their honest clients in government to answer Senate questions, they should look first to the bitter climate their own habits have created.

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COLLECTION:

Counsel's Office, White House

SERIES:

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FOLDER TITLE:

Libby [Folder 2]: [Loose Documents] [Folder 2]

FRC ID:

11703

OA Num.:

11717

NARA Num.:

11251

FOIA IDs and Segments:

2014-0234-F

RESTRICTION CODES

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Sent: Tuesday, March 27, 2007 6:02 PM
To: Blank, Kelly
Subject: FW: No Doubt

This is on the judiciary (majority) website.

From: Volkov, Michael
Sent: Tuesday, March 27, 2007 5:54 PM
To: Lynch, Caroline
Subject: No Doubt

Washington, DC) - The House Judiciary Committee announced that two subcommittees will hold hearings this week to consider Executive Branch Authority in criminal pardons and responses to congressional inquiries. The Crime, Terrorism and Homeland Security Subcommittee will hold a hearing on Thursday at 10 A.M. titled, "The Appropriate Use of the Presidential Pardoning Power." At 1 P.M., the Commercial and Administrative Law Subcommittee will hold a hearing titled, "Ensuring Executive Branch Accountability."

"With Scooter Libby's recent conviction and the ongoing US Attorney scandal that has revealed a severe lack of accountability in the executive branch, we found that these issues were relevant and necessary to investigate," said Judiciary Committee Chairman John Conyers, Jr. (D-MI). "Before there is talk of a presidential pardon for Scooter Libby or further attack on the constitutional checks and balances of this nation, we need to be aware of the historical context and future precedence that these issues affect."

Michael Volkov

Chief Minority Counsel

Subcommittee on Crime,

Terrorism, and Homeland Security

Rayburn B-351

Washington, D.C. 20515

(202) 225-6906



Department of Justice

STATEMENT OF

**ROGER C. ADAMS
PARDON ATTORNEY
DEPARTMENT OF JUSTICE**

BEFORE THE

**SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

CONCERNING

THE PRESIDENTIAL PARDON PROCESS

PRESENTED

MARCH 29, 2007

**Statement of Roger C. Adams
Pardon Attorney
Department of Justice
Before the
Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
United States House of Representatives**

March 29, 2007

Good Morning Mr. Chairman and Members of the Subcommittee:

I am here today at the Committee's request to describe the process the Office of the Pardon Attorney follows in carrying out the Department of Justice's responsibility to assist the President in the exercise of his clemency power. I might note initially that this is something the Department has done for over 100 years. Since at least the administration of William McKinley, the White House has usually relied on the Department, and specifically the Office of the Pardon Attorney, to receive, investigate, and make recommendations on clemency requests, and to prepare the documents the President signs when granting a pardon or a commutation of sentence.

Executive clemency petitions usually request either a pardon after completion of sentence or a commutation – reduction – of a sentence currently being served. The Department of Justice processes requests for executive clemency in accordance with regulations promulgated by the President and set forth at 28 C.F.R. §§ 1.1 to 1.11. These regulations provide internal guidance for Department of Justice personnel who advise and assist the President in carrying out the clemency function, but they create no enforceable rights in persons applying for executive clemency and do not restrict in any way the plenary clemency authority granted to the President under Article II, Section 2 of the Constitution.

A presidential pardon serves as an official statement of forgiveness for the commission of

a federal crime and restores basic civil rights. It does not connote innocence. Under the provisions of 28 C.F.R. § 1.2, a person does not become eligible to file a pardon request until the expiration of a five-year waiting period that commences upon the date of the individual's release from confinement (including home or community confinement) for his most recent conviction or, if no condition of confinement was imposed as part of that sentence, the date of conviction. Typically, the waiting period is triggered by the sentence imposed for the offense for which the pardon is sought, but any subsequent conviction begins the waiting period anew. Moreover, the same regulation stipulates that no petition for pardon should be filed by an individual who is then on probation, parole, or supervised release. In contrast to a pardon, a commutation is not an act of forgiveness, but rather simply remits some portion of the punishment being served. An inmate is eligible to apply for commutation so long as he has reported to prison to begin serving his sentence and is not challenging his conviction through an appeal or other court proceeding.

Pardon Requests

A pardon request is typically processed in the following manner. The pardon applicant files his clemency petition, addressed to the President, with the Office of the Pardon Attorney. He is free to utilize the services of an attorney or to act on his own behalf in seeking pardon. I would note that the application form and instructions are on my office's web site, and we will send them to an applicant by mail if asked to do so. The standard form utilized for this process requests information about the offense, the petitioner's other criminal record, his employment and residence history since the conviction and other biographical information, and his reasons for seeking pardon. The application must be signed and notarized, and the applicant must also submit three notarized affidavits from character references who are unrelated to him, know of his

conviction, and support his pardon request. When my office receives a pardon petition, it is screened to ensure that the applicant is in fact eligible to seek a pardon (*i.e.*, that the crime for which pardon is sought is a federal offense and that the waiting period has been satisfied), to determine whether any necessary information has been omitted from the application or whether the applicant's responses to the questions require further elaboration, and to ascertain whether the petitioner has described his efforts at rehabilitation. If the petitioner is ineligible to apply for pardon under the regulations, he is so informed. If the application is incomplete, further information is sought from the petitioner.

As an initial investigative step in a pardon case, the Office of the Pardon Attorney contacts the United States Probation Office for the federal district in which the petitioner was prosecuted to obtain copies of the presentence report and the judgment of conviction, as well as information regarding the petitioner's compliance with court supervision, and to ascertain the Probation Office's views regarding the merits of the pardon request. If review of the pardon petition and the data obtained from the Probation Office reveals information that clearly indicates favorable action is not warranted, my office prepares a report to the President for the signature of the Deputy Attorney General recommending that pardon be denied.

Alternatively, if the initial review indicates that the case may have some merit, it is referred to the FBI so that a background investigation can be conducted. The FBI does not make a recommendation to support or deny a pardon request. Rather, the Bureau provides the Office of the Pardon Attorney with factual information about the petitioner, including such matters as his criminal history, records concerning the offense for which pardon is sought, his employment and residence history, and his reputation in the community. The FBI report is reviewed by my

staff to ascertain whether favorable consideration of the case may be warranted. If the investigation reveals derogatory information of a type that would render pardon inappropriate and warrant denial of the request, my office prepares a report to the President through the Deputy Attorney General recommending such a result.

If the FBI report suggests that favorable treatment may be warranted, or in cases which are of particular importance or in which significant factual questions exist, the Office of the Pardon Attorney requests input from the prosecuting authority (*e.g.*, a United States Attorney or a Division of the Department of Justice such as the Criminal Division or Tax Division) and the sentencing judge concerning the merits of the pardon request. If the individual case warrants, other government agencies, such as the Internal Revenue Service, may be contacted as well. In appropriate cases in which the offense involved a victim, the prosecuting authority is asked to notify the victim of the pendency of the clemency petition and advise him that he may submit comments concerning the pardon request. Upon receipt of the responses to these inquiries, my office prepares a report containing a recommendation as to whether a pardon should be granted or denied. The report is drafted for the signature of the Deputy Attorney General and is submitted for his review. If the Deputy Attorney General concurs with my office's assessment, he signs the recommendation and returns the report to my office for transmittal to the Counsel to the President. If the Deputy Attorney General disagrees with the disposition proposed by the Office of the Pardon Attorney, he may direct the Pardon Attorney to modify the Department's recommendation. After the recommendation is signed by the Deputy Attorney General, the report is transmitted to the Counsel to the President for the President's action on the pardon request whenever he deems it appropriate.

Let me briefly discuss the standards that are typically considered by the Department of Justice in formulating our recommendations to the White House in pardon cases. They are set out in the United States Attorneys' Manual, which is a public record document, and the portions of the Manual that pertain to clemency can be found through my office's web site. Five factors are discussed in the Manual: the seriousness and relative recency of the offense; the applicant's post-conviction conduct, character, and reputation; the applicant's acceptance of responsibility for the crime and his or her remorse and atonement; the need for relief, in other words, why the person has applied for a pardon; and recommendations and reports we have solicited from the prosecuting office – usually a United States Attorney's Office – and the sentencing judge. I would also note another factor that is not explicitly listed in the U.S. Attorneys' Manual, but which is very important nevertheless. That is a lack of candor and honesty on the part of the applicant on the application form, during the interview with the FBI, or at some other stage. It is quite difficult to recommend that the President grant a pardon to someone who has lied to us during the process, even about a relatively minor matter that may have occurred many years ago, such as drug experimentation or the attempt to conceal an early marriage. Consequently, dishonesty in the course of applying for a pardon makes it less likely that the Department will recommend one.

Commutation Requests

Let me turn now to commutation requests. As is the case with pardons, a federal inmate seeking a presidential commutation of his sentence files a petition for such relief with the Office of the Pardon Attorney. The petitioner is free to append to the commutation application - or to submit separately at a later date - any additional documentation he believes will provide support

for his request. In completing the petition, the inmate - or his attorney, if he is represented by counsel - explains the circumstances underlying his conviction; provides information regarding his sentence, his criminal record, and any appeals or other court challenges he has filed regarding the conviction for which he seeks commutation; and states the grounds upon which he bases his request for relief.

When my office receives a commutation petition, we review it to ensure that the applicant is eligible to apply for clemency, and we commence an investigation of the merits of the request. The initial investigative step usually involves contacting the warden of the petitioner's correctional institution to obtain copies of the presentence report and judgment of conviction for the petitioner's offense, as well as the most recent prison progress report that has been prepared detailing his adjustment to incarceration, including his participation in work, educational, vocational, counseling, and financial responsibility programs; his medical status; and his disciplinary history. We also check automated legal databases for any court opinions relating to the petitioner's conviction. In most cases, the totality of this information establishes that a commutation would not be appropriate, and my office prepares a report to the President through the Deputy Attorney General recommending that commutation be denied.

In a minority of cases, however, if our review of this information raises questions of material fact or suggests that the commutation application may have some merit, or because the case presents significant issues, my office contacts the United States Attorney for the federal district of conviction or the prosecuting section of the Department of Justice for comments and recommendations regarding the commutation request. We also contact the sentencing judge, either through the United States Attorney or directly, to solicit the judge's views and

recommendation on the clemency application. As with pardon requests, if the individual case warrants, other government agencies may be contacted as well. In appropriate cases in which the offense involved a victim, the prosecuting authority is asked to notify the victim of the pendency of the commutation petition and advise him that he may submit comments concerning the clemency request.

Following an evaluation of all of the material gathered in the course of the investigation, the Pardon Attorney's Office drafts a report and recommendation for or against commuting the sentence, which is transmitted to the Deputy Attorney General. After his review, the Deputy Attorney General may either sign the report and recommendation or return it to my office for revision. Once the Deputy Attorney General determines that the report and recommendation satisfactorily reflects his views on the merits of the clemency request, he signs the document, which is then forwarded to the Counsel to the President for consideration by the President. Thereafter, when he deems it appropriate, the President acts on the commutation petition and grants or denies clemency, as he sees fit.

Let me mention briefly the matters the Department of Justice considers in formulating our recommendations in commutation cases. Those standards are also set out in the U.S. Attorneys' Manual, whose relevant portions may be accessed through my office's web site. As the Manual states, and as we inform commutation applicants and their relatives, while we consider all requests carefully, a commutation of sentence is an extraordinary form of clemency that is rarely granted. Factors that weigh in favor of a commutation include disparity of the sentence as compared to those imposed on codefendants or others involved in the same crime; extraordinary medical issues – such as paralysis or blindness that make living in a prison setting unduly

difficult – especially if the disability was not known at the time of sentencing; and unrewarded cooperation with the government.

The last factor, unrewarded cooperation with law enforcement, is less likely to result in a commutation today than in the past. That is because Rule 35 of the Federal Rules of Criminal Procedure has been amended in recent years to expand the time frame and circumstances under which the government may request the sentencing court to reduce a person's sentence to reward his cooperation after sentencing. Consequently, applicants who claim that their cooperation with the government should merit a sentence commutation have often received some reduction from the court, or at least the prosecutor has considered whether to request such a reduction. The Department's position is that the court is better situated to consider the extent, if any, to which an inmate's cooperation merits a sentence reduction. It is generally not the policy of the Department to ask the President to step in and grant a further reduction in this situation.

Grants of Clemency

When the President decides to grant clemency, whether in the form of pardon or commutation of sentence, the Counsel to the President informs the Office of the Pardon Attorney to prepare the appropriate clemency warrant. Typically, if the President intends to pardon a number of applicants, a master warrant of pardon will be prepared for his signature. The signed warrant lists the names of all of the individuals to whom the President grants pardon, and directs the Pardon Attorney to prepare and sign individual warrants of pardon reflecting the President's action to be delivered to each pardon recipient. Like the master warrant, the individual warrant bears the seal of the Department of Justice and reflects that it has been prepared at the direction of the President. When the individual pardon warrant has been prepared, it is sent to the applicant

or to his attorney if he is represented by counsel.

If the President decides to commute a prisoner's sentence, the Pardon Attorney's Office likewise prepares the warrant of commutation for the President's signature. Depending upon how many sentences are to be commuted, either a master warrant detailing all of the commuted sentences or individual commutation warrants may be prepared. After the President has signed the commutation warrant, which bears the seal of the Department of Justice, the Pardon Attorney's Office transmits a certified copy of the document to the Bureau of Prisons to effect the inmate's release. A copy of the warrant is also sent to the petitioner's attorney if he is represented by counsel. Whenever the President grants a pardon or a commutation, the Pardon Attorney's Office notifies the prosecuting authority (United States Attorney or Division of the Justice Department), the sentencing judge, the relevant United States Probation Office, the FBI, and any other government agencies whose views were solicited, of the final decision in the matter. Finally, whenever the President grants either a pardon or a commutation, the Office of the Pardon Attorney prepares a press notice listing the names of the persons who received clemency, their cities and states of residence, the offense, the district and date of conviction, and the sentence imposed. The press notice does not, however, include details about the person's offense or the reason the President granted him clemency. The press notice is made available to the news media shortly after the President has acted.

Denials of Clemency

When the President denies clemency, the Counsel to the President typically notifies the Deputy Attorney General and the Pardon Attorney's Office by memorandum that the affected cases have been decided adversely. The Pardon Attorney's Office then notifies the pardon or

commutation applicant, or his attorney, in writing, of the decision. In the case of a commutation applicant, the notification is made by a memorandum to the warden at the appropriate federal prison, who is requested to inform the applicant. In addition, the Pardon Attorney's Office notifies the prosecuting authority, the sentencing judge, and other government agencies whose views were solicited. No reasons for the President's action are given in the notice of denial.

Statistics and Record Keeping

Traditionally, the Office of the Pardon Attorney has served as a repository for records of clemency grants by prior Presidents. We maintain on compact discs copies of documents signed by Presidents George Washington through William J. Clinton granting pardons or other forms of clemency. We believe these records to be very complete, and we make these compact discs available to the public upon request. Using these CDs and other indices, we have the ability to research whether an individual has received a pardon during a particular time period. These records also have enabled the Office to assemble statistics showing the numbers of clemency petitions received and granted for each fiscal year as well as for entire presidential administrations from 1901 through January 20, 2001. All of these statistics are available on my office's web site. Not on the web site, but made available as a public record document by my office to anyone who asks, are statistics showing the numbers of applications and grants of clemency for each fiscal year of the current administration.

Mr. Chairman, that concludes my prepared testimony. I would be glad to try to answer any questions you and the members of the subcommittee may have.

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Email	RE: Pardon Hearing - To: Fred F. Fielding, et al - From: William K. Kelley	3	03/28/2007	P5;

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SERIES:

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FOLDER TITLE:

Libby [Folder 2]; [Loose Documents] [Folder 2]

FRC ID:

11703

OA Num.:

11717

NARA Num.:

11251

FOIA IDs and Segments:

2014-0234-F

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- A. Closed by Executive Order 13526 governing access to national security information.
- B. Closed by statute or by the agency which originated the document.
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal Marker

The George W. Bush Library

FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Email	FW: Draft Letter re Libby Subpoena [with attachment] - To: Fred F. Fielding - From: William K. Kelley	3	02/12/2007	Court Sealed;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
Withdrawal/Redaction Sheet at the front of the folder.**

COLLECTION:

Counsel's Office, White House

SERIES:

Fielding, Fred - General Files

FOLDER TITLE:

Libby [Folder 2]: [Loose Documents] [Folder 2]

FRC ID:

11703

OA Num.:

11717

NARA Num.:

11251

FOIA IDs and Segments:

2014-0234-F

RESTRICTION CODES**Presidential Records Act - [44 U.S.C. 2204(a)]**

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

Withdrawal Marker

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter from Paul R. Eckert - To: Kathleen Kedian - From: Paul R. Eckert	2	02/12/2007	P5; P6/b6;

**This marker identifies the original location of the withdrawn item listed above.
For a complete list of items withdrawn from this folder, see the
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COLLECTION:

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SERIES:

Fielding, Fred - General Files

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