

FOIA Marker

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Counsel's Office, White House

Fielding, Fred - General Files

Stack:	Row:	Sect.:	Shelf:	Pos.:	FRC ID:	Location or Hollinger ID:	NARA Number:	OA Number:
W	19	23	4	1	11703	24566	11251	11717

Folder Title:

Libby [Folder 1]: [Appeals]

Withdrawn/Redacted Material

The George W. Bush Library

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Memorandum	Other Appeal Issues - To: The Chief of Staff - From: Fred F. Fielding	3	06/25/2007	P5;
002	Memorandum	Additional Research Concerning Appeal Issues - Libby - To: The Chief of Staff - From: Fred F. Fielding	3	06/26/2007	P5;

COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Fielding, Fred - General Files

FOLDER TITLE:
Libby [Folder 1]: [Appeals]

FRC ID:
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]
- 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]

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)]

- 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]
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- 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]

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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FRC ID:

11703

OA Num.:

11717

NARA Num.:

11251

FOIA IDs and Segments:

2014-0234-F

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Rule 35. En Banc Determination

(a) When Hearing or Rehearing En Banc May Be Ordered. A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

- (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or
- (2) the proceeding involves a question of exceptional importance.

(b) Petition for Hearing or Rehearing En Banc. A party may petition for a hearing or rehearing en banc.

- (1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

- (2) Except by the court's permission, a petition for an en banc hearing or rehearing must not exceed 15 pages, excluding material not counted under Rule 32.

- (3) For purposes of the page limit in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.

(c) Time for Petition for Hearing or Rehearing En Banc. A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.

(d) Number of Copies. The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.

(e) Response. No response may be filed to a petition for an en banc consideration unless the court orders a response.

(f) Call for a Vote. A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.

Circuit Rule 35

Petition for Panel Rehearing and Petition for Hearing or Rehearing En Banc

(a) Time Within Which to File. A petition for panel rehearing or a petition for rehearing en banc, in a case in which neither the United States nor an agency or officer thereof is a party, must be filed within 30 days after entry of judgment or other form of decision. In all cases in which the United States or an agency or officer thereof is a party, the time within which any party may seek panel rehearing or rehearing en banc is 45 days after entry of judgment or other form of decision. The time for filing a petition for panel rehearing or rehearing en banc will not be extended except for good cause shown.

(b) Number of Copies and Length. An original and 4 copies of a petition for panel rehearing, and an original and 19 copies of a petition for hearing or rehearing en banc must be filed. Such petitions must conform to the page limits of FRAP 35. This court disfavors motions to exceed page limits, and such motions will be granted only for extraordinarily compelling reasons.

(c) Panel Opinion, Certificate of Parties, and Disclosure Statement to be Attached. A copy of the opinion of the panel from which rehearing is being sought; a certificate of parties and amici, as described in Circuit Rule 28(a)(1)(A); and a disclosure statement, as described in Circuit Rule 26.1, must be attached as an addendum to the petition. Any required disclosure statement must also be attached to any response to a petition.

(d) Disposition of Petition. A petition for rehearing ordinarily will not be granted, nor will an opinion or judgment be modified in any significant respect in response to a petition for rehearing, in the absence of a request by the court for a response to the petition.

A petition for panel rehearing will not be acted upon until action is ready to be taken on any timely petition for rehearing en banc. If rehearing en banc is granted, the panel's judgment, but ordinarily not its opinion, will be vacated, and the petition for panel rehearing may be acted upon without awaiting final termination of the en banc proceeding. Upon termination of the en banc proceeding, a new judgment will be issued. If the en banc court divides evenly, a new judgment affirming the decision under review will be issued.

(e) Filing Copies of Brief. When a petition for rehearing is granted, the court will issue an appropriate order if further briefing is needed or if more copies of the original briefs are required.

(f) Brief of an Amicus Curiae. No amicus curiae brief in response to or in support of a petition for rehearing en banc will be received by the clerk except by invitation of the court.

within 10 days of receipt, unless the Court or a Justice, or the Clerk under Rule 30.4, orders otherwise. A response to a motion prepared as required by Rule 33.1, except a response to a motion for leave to file an *amicus curiae* brief (see Rule 37.5), shall be prepared in the same manner if time permits. In an appropriate case, the Court may act on a motion without waiting for a response.

Rule 22. Applications to Individual Justices

1. An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the sought relief.

2. The original and two copies of any application addressed to an individual Justice shall be prepared as required by Rule 33.2, and shall be accompanied by proof of service as required by Rule 29.

3. An application shall be addressed to the Justice allotted to the Circuit from which the case arises. When the Circuit Justice is unavailable for any reason, the application addressed to that Justice will be distributed to the Justice then available who is next junior to the Circuit Justice; the turn of the Chief Justice follows that of the most junior Justice.

4. A Justice denying an application will note the denial thereon. Thereafter, unless action thereon is restricted by law to the Circuit Justice or is untimely under Rule 30.2, the party making an application, except in the case of an application for an extension of time, may renew it to any other Justice, subject to the provisions of this Rule. Except when the denial is without prejudice, a renewed application is not favored. Renewed application is made by a letter to the Clerk, designating the Justice to whom the application is to be directed, and accompanied by 10 copies of the original application and proof of service as required by Rule 29.

5. A Justice to whom an application for a stay or for bail is submitted may refer it to the Court for determination.

6. The Clerk will advise all parties concerned, by appropriately speedy means, of the disposition made of an application.

Rule 23. Stays

1. A stay may be granted by a Justice as permitted by law.
2. A party to a judgment sought to be reviewed may present to a Justice an application to stay the enforcement of that judgment. See 28 U. S. C. §2101(f).
3. An application for a stay shall set out with particularity why the relief sought is not available from any other court or judge. Except in the most extraordinary circumstances, an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof. An application for a stay shall identify the judgment sought to be reviewed and have appended thereto a copy of the order and opinion, if any, and a copy of the order, if any, of the court or judge below denying the relief sought, and shall set out specific reasons why a stay is justified. The form and content of an application for a stay are governed by Rules 22 and 33.2.
4. A judge, court, or Justice granting an application for a stay pending review by this Court may condition the stay on the filing of a supersedeas bond having an approved surety or sureties. The bond will be conditioned on the satisfaction of the judgment in full, together with any costs, interest, and damages for delay that may be awarded. If a part of the judgment sought to be reviewed has already been satisfied, or is otherwise secured, the bond may be conditioned on the satisfaction of the part of the judgment not otherwise secured or satisfied, together with costs, interest, and damages.

PART VI. BRIEFS ON THE MERITS AND ORAL ARGUMENT

Rule 24. Briefs on the Merits: In General

1. A brief on the merits for a petitioner or an appellant shall comply in all respects with Rules 33.1 and 34 and shall contain in the order here indicated:

**Custody Status of Appellants
Resolution of Their Appeals**

District	Total appeals ^a	Appellants released	Percent	Appellants in custody ^b	Percent
Northern Indiana	8	0	0%	8	100%
Arizona	54	4	7	50	93
Southern Florida	320	29	9	291	91
Eastern New York	129	16	12	113	88
Total	511	49	10%	462	90%

^aThese numbers are actual numbers of appellants who appealed their conviction and/or sentence from all criminal cases that were initiated in the four districts during calendar year 1986.

^bThis category includes two offenders who were fugitives because they failed to surrender as directed by the court.

Judges and other court officials in three of the districts (northern Indiana, southern Florida, and eastern New York) told us that appellants were much more likely to be in custody under the 1984 law than under the 1966 law. In the Arizona district, court officials were not able to provide us with a comparison of the custody of appellants under the old and new law.