

Federal Practitioners: Make the "Libby Motion"!

Contributed by James Ostgard

George W. Bush, President and ultimate head of the executive agency known as the Department of Justice, has taken a position on the federal sentencing guidelines that might not be a bad addition to any position pleading a defense lawyer would care to file. Read about his "position pleading " on behalf of Mr. Libby in Adam Liptak's article in the New York Times.

Bush, in commuting Libby's sentence, criticized the harshness of the Guidelines-approved punishment imposed by the federal trial judge and, in essence, called that sentence unreasonable. Reasonableness, of course, is the new touchstone for federal sentences, which, we've just learned, may be "presumed" reasonable by appellate judges if pronounced within the advisory U.S. Sentencing Guidelines range by the district court. *Rita v. United States*.

It is irresistible. We are compelled to include reference to Bush's "reasonableness analysis" in the Libby case in our own position pleadings, at least for awhile.

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