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TROY L. ELLERMAN

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TROY L. ELLERMAN,

Defendant.

CR. No. 07-0080-JSW

**DEFENDANT TROY ELLERMAN'S
SUPPLEMENTAL SENTENCING
MEMORANDUM**

Date: July 12, 2007

Time: 2:30 p.m.

Judge: Honorable Jeffrey S. White

Defendant Troy L. Ellerman, by and through his counsel of record Scott L. Tedmon, respectfully provides this Supplemental Sentencing Memorandum for the Court's review and consideration in advance of the hearing set for Thursday, July 12, 2007 at 2:30 p.m. In addition to this supplemental sentencing memorandum, Mr. Ellerman incorporates herein by reference the arguments set forth in his June 5, 2007 sentencing memorandum.

I

**THE NEW RULE 11(c)(1) (C) PLEA AGREEMENT IS
APPROPRIATE AND SHOULD BE ACCEPTED BY THE COURT**

On February 15, 2007, pursuant to the Federal Rules of Criminal Procedure, Rule 11(c)(1) (C) written plea agreement, Mr. Ellerman entered guilty pleas to a four-count Information, which included in Counts One and Four a violation of 18 U.S.C. §401 - Criminal Contempt; in Count Two with a violation of 18 U.S.C. §1623(a) - Filing a False Declaration; and in Count Three with a violation of 18 U.S.C. §1503 - Obstruction of Justice. The original written plea agreement did not

1 group the four counts thus establishing the Total Offense Level at 18. Indexing a Total Offense
2 Level of 18 with Mr. Ellerman's Criminal History Category of I, the guideline imprisonment range
3 in the written plea agreement was set at 27-33 months. As part of the Rule 11(c)(1) (C) plea, the
4 government and Mr. Ellerman agreed to a range of imprisonment of between zero and twenty-four
5 months. Pursuant to the terms of the original plea agreement, the government and Mr. Ellerman
6 were free to argue for any sentence of imprisonment in the range of 0-24 months.

7 After the guilty pleas were entered, the matter was referred to U.S. Probation for a
8 Presentence Investigation Report. U.S. Probation Officer Lynne Richards prepared the Presentence
9 Report (PSR) on April 30, 2007 and the final PSR was disclosed on May 24, 2007. With respect to
10 the guideline calculations, the final PSR was at variance with the terms of the original written plea
11 agreement in one aspect, specifically the grouping of counts. The original written plea agreement
12 did not group the four counts while Probation grouped the counts pursuant to U.S.S.G. §3D1.2(b).
13 Based on the grouping position of Probation, which is found on page 7 at paragraph 15 of the PSR,
14 the Total Offense Level is 14 versus the Total Offense Level of 18 as set forth in the original written
15 plea agreement. Indexing a Total Offense Level of 14 with a Criminal History Category I, Probation
16 concludes the guideline range of imprisonment for Mr. Ellerman is 15-21 months. As noted in the
17 PSR, the guideline calculations are no longer binding on the Court but rather, are advisory pursuant
18 to the Supreme Court's decision in United States v. Booker, 125 S.Ct. 738 (2005). Pursuant to
19 Booker, the guideline range must be considered by the Court together with other sentencing goals.

20 In the original written plea agreement, Mr. Ellerman and his counsel agreed to all the terms
21 set forth therein, which included a four-level multiple count enhancement under U.S.S.G. §3D1.4(a),
22 resulting in a Total Offense Level of 18 and a sentencing guideline range of 27-33 months. In
23 negotiating the terms of the original written plea agreement, many issues were addressed by the
24 government and counsel for Mr. Ellerman, including the matter of grouping. Given the
25 government's reasoned position on grouping, combined with other matters relating to pursuing a
26 resolution in the best interest of Mr. Ellerman, the four-level multiple count enhancement was
27 included as a stipulated term of the original written plea agreement. With the understanding that this
28 four-level multiple count enhancement would bring Mr. Ellerman's advisory guideline range of

1 imprisonment to 27-33 months, the government and defense agreed that based on all factors present
2 in the case, a Rule 11(c)(1) (C) plea agreement was appropriate with the original range of
3 imprisonment for the Court to consider being 0-24 months.

4 On June 14, 2007, the parties appeared before the Court and took up the matter of guideline
5 calculation. After some discussion, the Court determined that for the purpose of Mr. Ellerman's
6 conditional plea, the advisory guideline range is 27-33 months. The Court then moved to the issue
7 of whether the original plea agreement would be accepted. The Court informed the parties that it
8 was rejecting the original plea agreement but then stated it would allow the government and defense
9 additional time to continue negotiating in an effort to resolve the matter. On July 2, 2007, the parties
10 entered into a new and different Rule 11(c)(1) (C) plea agreement. While this new plea agreement
11 is similar to the one originally presented, the range of sentence which the Court can consider has
12 been expanded to 0-33 months, with 33 months representing the high-end of Mr. Ellerman's
13 guideline range as previously determined by the Court. On the matter of a fine, the new plea
14 agreement establishes the fine range as \$6,000 to \$60,000 and caps the fine at the high-end of the
15 guideline range, which is \$60,000.

16 This matter is now set before the Court on July 12, 2007. Without conceding that a sentence
17 of 27-33 months is necessary or appropriate, this new plea agreement allows the Court to consider
18 a sentence fully within Mr. Ellerman's guideline range of 27-33 months. Based on the foregoing,
19 Mr. Ellerman respectfully requests that this Court accept the new Rule 11(c)(1) (C) written plea
20 agreement, Mr. Ellerman's related guilty pleas entered on February 15, 2007, and proceed to
21 sentencing.

22 **II**

23 **MR. ELLERMAN REQUESTS THE COURT**
24 **IMPOSE A TERM OF IMPRISONMENT OF 15 MONTHS**

25 The new written plea agreement allows the Court to sentence Mr. Ellerman to probation,
26 terms of which could include no jail time, or community confinement, or home detention, or a split
27 sentence, or denial of probation with a sentence of up to 33 months in prison with supervised release
28 to follow. As discussed previously, the advisory guideline range for Mr. Ellerman is 27-33 months

1 as determined by the Court on June 14, 2007. In addition to the advisory guideline range, the Court
2 must take into account various factors listed in 18 U.S.C. §3553 before imposing the sentence. As
3 set forth in the PSR, 18 U.S.C. §3553 factors include, but are not limited to: (1) the nature and
4 circumstances of the offense; (2) the history and characteristics of the defendant; (3) the need to
5 reflect the seriousness of the crime, promote respect for the law, and impart just punishment; (4) the
6 need to protect the community; and (5) the need to afford adequate deterrence. Additionally, the
7 Court is instructed to impose a sentence that is sufficient, but not greater than necessary.

8 Mr. Ellerman stated in his June 5, 2007 sentencing memorandum that a sentence of probation
9 is not appropriate and is not sought by the defense. The issue that presents itself is what amount of
10 prison time is sufficient, but not greater than necessary, to impose a just sentence in Mr. Ellerman's
11 case. Mr. Ellerman stated to the Court in his June 5, 2007 sentencing memorandum that a term of
12 imprisonment of 15 months takes into account the terms of the plea agreement, all guidelines factors,
13 strikes a proper balance between competing interests, and is a sentence which is sufficient but not
14 greater than necessary. For the reasons enumerated in his June 5, 2007 sentencing memorandum
15 along with additional arguments included herein, Mr. Ellerman is steadfast in his position that 15
16 months in prison is the proper sentence in this case.

17 Addressing the area of offense conduct for which he has been convicted, and which has been
18 set forth in detail in the plea agreement and the PSR, Mr. Ellerman readily admitted what he did and
19 pleaded guilty to all counts at the earliest stage of the proceeding. In response to Probation's request
20 that he detail in writing what was going on in his life during the time these offenses occurred, Mr.
21 Ellerman obliged and proceeded to honestly and specifically described the severe difficulties he was
22 going through during that time period. However, it is important this Court understand that at no time
23 has Mr. Ellerman ever offered up those difficulties as an excuse for his conduct in this case. He was
24 asked by Probation to explain what his life was like at that time and he did so. For the government
25 or anyone else to suggest that Mr. Ellerman's honesty in laying out what his life was like during that
26 difficult time period was only being tendered to provide an excuse for his conduct in this case is flat-
27 out wrong and perverts the reason as to why that information was offered. As stated in his original
28 sentencing memorandum, Mr. Ellerman acknowledges that as an officer of the Court, his actions

1 were offensive and an affront to the judicial process as a whole. Importantly, and entirely consistent
2 with his early plea of guilty, Mr. Ellerman is genuinely remorseful to the Court, the U.S.
3 Government, and anyone else who was adversely affected by his actions, which includes his family
4 and friends. In her sentencing recommendation at page three, Probation Officer Lynne Richards
5 echoes this fact by stating, “Mr. Ellerman knows he committed serious acts, is extremely contrite,
6 and is not in danger of re-offending.”

7 Mr. Ellerman clearly understands that the nature and circumstances of his offenses require
8 this Court to impose a sentence that reflects the seriousness of his crimes, promote respect for the
9 law and serve as an adequate deterrent. As stated in defense counsel’s original sentencing
10 memorandum and during the court hearing on June 14, 2007, there is no dispute that the only
11 appropriate sentence for Mr. Ellerman is one of prison time with supervised release to follow.
12 However, all necessary sentencing objectives relating to Mr. Ellerman’s offense conduct would be
13 accomplished by imposing a term of imprisonment of 15 months.

14 In rejecting the original plea agreement at the June 14, 2007 hearing, the Court commented
15 that because Mr. Ellerman was an attorney, he must be held to a “higher standard.” In addressing
16 the Court’s comment, defense counsel contends that a review of the collateral consequences suffered
17 by Mr. Ellerman, taken in combination with the proposed prison sentence of 15 months, clearly
18 punishes Mr. Ellerman to a greater extent and holds him to a much higher standard far beyond that
19 of other defendants. Counsel for Mr. Ellerman is not alone in the contention that a below guideline
20 sentence is appropriate.

21 In addressing the issue of punishment and deterrence in her sentencing recommendation,
22 Probation Officer Richards accurately sets forth the significant collateral punishment Mr. Ellerman
23 has already suffered prior to sentencing when she states,

24 “The question, when considering deterrence, is, ‘Whom does the Court want, or
25 need, to deter?’ If one considers only Mr. Ellerman, it is clear that no further
26 deterrence is needed. Ellerman committed his crimes over a five-month period, and
27 after all was said and done, he had garnered four felony convictions, resigned from
28 the California Bar, lost his job at the PRCA, and found himself facing a prison term.
Mr. Ellerman know he committed serious acts, is extremely contrite, and is not in
danger of re-offending. Thus, for Mr. Ellerman, a very high price has already been
paid. Mr. Ellerman was a lawyer, though, and he is not being sentenced in a vacuum.
The Court must consider deterrence in general and must sentence accordingly. It

1 must not impose a sentence, though, that disregards the history and characteristics of
2 Ellerman.” (See page 3, emphasis added.)

3 In their original sentencing memorandum, the government argued that Mr. Ellerman deserved
4 a sentence below the guideline range based on acceptance of responsibility. The government
5 observed that,

6 “Unlike those who choose to put the government through the task of proving their
7 guilt at trial, (“Libby Sentenced to 30 Months in Prison,” Los Angeles Times (June
8 5, 2007)), after the government and its informant developed evidence showing
9 defendant’s guilt, he agreed to plead guilty, fully admitting his crimes. In the
10 circumstances of this case, defendant’s guilty plea saved an unusual amount of time
and resources (including district court and appellate court resources) by obviating the
need for the media testimony in this case and for further contempt proceedings
against the reporters and the Chronicle. For this reason, the government believes a
sentence of 24 months imprisonment, below the properly calculated guideline range
of 27-33 months, is warranted.” (See Gov. Sentencing Memo at page 22, lines 3-15)

11 While the government in its’ sentencing memorandum does not specifically address the
12 collateral consequences suffered by Mr. Ellerman as a result of his actions, they do raise a
13 comparison between the disparate difference of how Mr. Ellerman chose to handle his case versus
14 that of Lewis “Scooter” Libby.

15 Events have changed since the Government last raised the Libby matter in their sentencing
16 memorandum. After Lewis Libby had been convicted by a jury of obstruction of justice in count
17 one, false statement to the FBI in count two, and perjury before the Grand Jury in counts four and
18 five, and then sentenced by the district court, President George W. Bush commuted the 30-month
19 prison portion of Mr. Libby’s sentence. In his July 2, 2007 statement granting executive clemency
20 for Lewis Libby, President Bush wrote:

21 “The United States Court of Appeals for the D.C. Circuit today rejected Lewis
22 Libby’s request to remain free on bail while pursuing his appeals for the serious
23 convictions of perjury and obstruction of justice. As a result, Mr. Libby will be
required to turn himself over to the Bureau of Prisons to begin serving his prison
sentence.

24 I have said throughout this process that it would not be appropriate to comment or
25 intervene in this case until Mr. Libby’s appeals have been exhausted. But with the
denial of bail being upheld and incarceration imminent, I believe it is now important
to react to that decision.

26 From the very beginning of the investigation into the leaking of Valerie Plame’s
27 name, I made it clear to the White House staff and anyone serving in my
28 administration that I expected full cooperation with the Justice Department. Dozens
of White House staff and administration officials dutifully cooperated.

1 After the investigation was under way, the Justice Department appointed United
2 States Attorney for the Northern District of Illinois Patrick Fitzgerald as a Special
3 Counsel in charge of the case. Mr. Fitzgerald is a highly qualified, professional
4 prosecutor who carried out his responsibilities as charged.

5 This case has generated significant comment and debate. Critics of the investigation
6 have argued that a special counsel should not have been appointed, nor should the
7 investigation have been pursued after the Justice Department learned who leaked Ms.
8 Plame's name to columnist Robert Novak. Furthermore, the critics point out that
9 neither Mr. Libby nor anyone else has been charged with violating the Intelligence
10 Identities Protection Act or the Espionage Act, which were the original subjects of
11 the investigation. Finally, critics say the punishment does not fit the crime: Mr.
12 Libby was a first-time offender with years of exceptional public service and was
13 handed a harsh sentence based in part on allegation never presented to the jury.

14 Others point out that a jury of citizens weighed all the evidence and listened to all the
15 testimony and found Mr. Libby guilty of perjury and obstruction of justice. They
16 argue, correctly, that our entire system of justice relies on people telling the truth.
17 And if a person does not tell the truth, particularly if he serves in government and
18 holds the public trust, he must be held accountable. They say that had Mr. Libby
19 only told the truth, he would not have been indicted in the first place.

20 Both critics and defenders of this investigation have made important points. I have
21 made my own evaluation. In preparing for the decision I am announcing today, I
22 have carefully weighed these arguments and the circumstances surrounding this case.

23 Mr. Libby was sentenced to thirty months of prison, two years of probation, and a
24 \$250,000 fine. In making the sentencing decision, the district court rejected the
25 advice of the probation office, which recommended a lesser sentence and the
26 consideration of factors that could have led to a sentence of home confinement or
27 probation.

28 I respect the jury's verdict. But I have concluded that the prison sentence given to
Mr. Libby is excessive. Therefore, I am commuting the portion of Mr. Libby's
sentence that required him to spend thirty months in prison.

My decision to commute his prison sentence leaves in place a harsh punishment for
Mr. Libby. The reputation he gained through his years of public service and
professional work in the legal community is forever damaged. His wife and young
children have also suffered immensely. He will remain on probation. The significant
fines imposed by the judge will remain in effect. The consequences of his felony
conviction on his former life as a lawyer, public servant, and private citizen will be
long-lasting.

The Constitution gives the President the power of clemency to be used when he
deems it to be warranted. It is my judgment that a commutation of the prison term
in Mr. Libby's case is an appropriate exercise of this power."

In reviewing President Bush's statement, it is clear he balanced the fact of Mr. Libby's
conviction with other factors and circumstances that are relevant to an appropriate decision. In
discussing the various factors involved, the President quite correctly took into account the harsh
collateral consequences of punishment which Mr. Libby will endure. Specifically, the President

1 determined that any prison sentence for Mr. Libby would be excessive in light of the harsh reality
2 that Mr. Libby's hard-earned reputation of public service and professional work in the community
3 is forever damaged. Additionally, the President correctly pointed out that Mr. Libby's family has
4 also significantly suffered as a result of his conduct. Finally, the President correctly states that the
5 consequences of Mr. Libby's felony conviction on his former life as a lawyer, public servant and
6 private citizen will be long-lasting.

7 President Bush's analysis and weighing of various factors in the Libby matter is instructive
8 in Mr. Ellerman's case. The offense conduct in Mr. Ellerman's case and Mr. Libby's case is
9 somewhat similar in that both included an obstruction of justice charge. The false declaration charge
10 and contempt charges in Mr. Ellerman's case are of a similar class as that of Mr. Libby's false
11 statement charge and perjury charges. However, a significant point of departure in offense conduct
12 between the two cases is that Mr. Libby's conduct involved matters of national security while Mr.
13 Ellerman's conduct has no nexus to national security.

14 In the area of offense conduct, Mr. Ellerman has acknowledged the seriousness of his conduct
15 and understands it must be weighed as a determining factor at sentencing. In his original sentencing
16 memorandum on pages 4 and 5, Mr. Ellerman acknowledges that his actions were offensive, an
17 affront to the judicial process as a whole and must be taken into account at sentencing. It is
18 important to note there is one fundamental difference between Mr. Ellerman and Mr. Libby on the
19 topic of offense conduct. Specifically, Mr. Ellerman acknowledged his criminality and pleaded
20 guilty to all four counts charged at the earliest stage of the court process. In contrast, Mr. Libby took
21 the government all the way through a jury trial and as far as defense counsel knows, Libby has never
22 publically acknowledged any wrongdoing on his part, even in light of the commutation of his 30-
23 month prison sentence.

24 As to the issue of personal and public deterrence, there is a similar interest between the two
25 cases in that Mr. Ellerman and Mr. Libby were both lawyers who acted illegally in leaking privileged
26 information to the media. Further, due to the nature of the issues involved, with Ellerman's case
27 dealing with steroids in professional sports while Libby's case involved matters of national security,
28 both became high-profile cases and matters of public interest. In Mr. Ellerman's case, defense

1 counsel acknowledged that personal and public deterrence are factors at sentencing. As stated on
2 page 5 of Mr. Ellerman's original sentencing memorandum, a 15-month sentence is significant and
3 would speak loudly to any lawyer who would be tempted to act inappropriately or illegally within
4 the confines of our judicial system.

5 While offense conduct and deterrence are factors to be taken into account at sentencing, the
6 Court must also consider the history and characteristics of Mr. Ellerman in determining an
7 appropriate sentence. It is clear that in reviewing President Bush's statement, he likewise took into
8 account the positive history and personal characteristics of Lewis Libby in determining his ultimate
9 decision to commute the prison portion of Libby's sentence.

10 Similar to Mr. Libby, Troy Ellerman's pre-offense history and personal characteristics are
11 nothing short of exceptional. On page 2 of Probation Officer Richards' Sentencing
12 Recommendation, she states the following: "A look at Ellerman's history reveals a man of marked
13 conviction and principle." "To some, the fact that Ellerman is a 'cowboy' suggests that he is 'rough
14 around the edges' and harsh. In actuality, however, nothing could be further from the truth."
15 Probation Officer Richards continues by observing that while it may seem odd to talk of Mr.
16 Ellerman possessing strong moral character given his guilty pleas in this case, she nevertheless
17 concludes, "Mr. Ellerman is indeed a man of high moral fiber." Probation Officer Richards finalizes
18 her position by correctly stating, "Still, but for the aberrant conduct that spanned a period of five
19 months, Ellerman has led an exemplary life. This is an important point to consider at sentencing."
20 In her sentencing recommendation, Probation Officer Richards concludes that taking all factors into
21 account, including Mr. Ellerman's history and personal characteristics, a sentence of 18 months is
22 sufficient, but not greater than necessary, to accomplish the goals of the sentencing guidelines.

23 One can draw a close parallel between the comments of Probation Officer Richards regarding
24 the history and characteristics of Troy Ellerman and those of President Bush regarding Lewis Libby.
25 As with Mr. Libby, Troy Ellerman is a first-time offender with years of exceptional work as an
26 attorney in both the public and private sectors. Mr. Ellerman then left the legal profession to serve
27 as Commissioner of the Professional Rodeo Cowboys Association. It is well-established that Mr.
28 Ellerman's performance as Commissioner was nothing short of remarkable in turning a close-to-

1 bankrupt organization into a successful and profitable venture in only two years.

2 As reflected in the PSR, Probation Officer Richards has provided the Court with a candid,
3 yet balanced portrait of Mr. Ellerman which directly ties into Ms. Richards' recommendation of 18
4 months. Counsel for Mr. Ellerman urges the Court to give strong consideration to Probation Officer
5 Richards' well-reasoned and independent sentencing recommendation.

6 Regarding Mr. Ellerman as a person, this Court has previously been presented with letters
7 of reference from several individuals who know Mr. Ellerman and come from a variety of different
8 relationships, which included family, friends, attorneys, a former judge, members of the Professional
9 Rodeo Cowboys Association (PRCA), sponsors of the PRCA, and those who worked with Mr.
10 Ellerman during his tenure as Commissioner of the PRCA. Although each writer came from a
11 different point of relationship with Mr. Ellerman, the common thread of honesty, integrity and trust
12 emerged in every letter when each addressed the matter of Troy Ellerman's personal character.

13 With the exception of this short, but disastrous period of time in his life, Mr. Ellerman's
14 honesty and integrity is well-chronicled in the PSR and in the letters of reference submitted to the
15 Court. Further evidence of the true character of Mr. Ellerman is found in the manner by which he
16 has handled this case. While Mr. Ellerman will never be able to "make things right" when it comes
17 to what he did in this case, he has taken every step possible to handle his charges with integrity and
18 to ensure that no one else was hurt by his conduct, such as Mark Fainaru-Wada, Lance Williams and
19 their families. Additionally, Mr. Ellerman, unlike Lewis Libby, has done everything in his power
20 to promote the judicial process in expediting this case to a prompt resolution.

21 As to the personal effect of his convictions, Mr. Ellerman stands in a strikingly similar place
22 to that of Mr. Libby as follows:

- 23 1. Mr. Ellerman will have four felony convictions for the rest of his life.
- 24 2. Mr. Ellerman has lost his right to practice law.
- 25 3. Mr. Ellerman has lost his opportunity to serve his public constituency, the PRCA.
- 26 4. Mr. Ellerman's life as a private citizen has been unalterably changed.
- 27 5. Mr. Ellerman's family has suffered immensely.

28

1 Each of the above-enumerated personal effects of his convictions speak to the fact that like
2 Lewis Libby, Troy Ellerman has already been held to a “higher standard” of punishment. However,
3 a key difference remains in that unlike Mr. Libby, it is clear that Troy Ellerman will spend significant
4 time in a federal prison. Probation Officer Richards addresses the issue of incarceration for Mr.
5 Ellerman on page 3 of her sentencing recommendation where she states, “It is indeed worth
6 mentioning that for Ellerman - or for any other attorney who is facing a prison sentence - even a few
7 months of incarceration is an unimaginable term.” Probation Officer Richards continues with the
8 observation that, “If the Court’s only consideration were to deter Mr. Ellerman from committing
9 future crimes, the Court could ignore the guideline imprisonment range and send Mr. Ellerman
10 home. Likewise, if the Court wanted to assure that Ellerman would be punished for his criminal
11 conduct, it would note that the collateral consequences have had serious repercussions in many areas
12 of Ellerman’s life and that Ellerman needs little, if any, additional punishment to get the point
13 across.”

14 Probation Officer Richards’ words come close to mirroring President Bush’s evaluation of
15 the Libby matter which ultimately led the President to commute Mr. Libby’s entire prison term.
16 While no one before this Court is seeking a sentence which contemplates no prison time, Probation
17 Officer Richards’ analysis regarding the significant collateral consequences on Mr. Ellerman, as a
18 lawyer, is as compelling as the evaluation used by President Bush in commuting Lewis Libby’s
19 prison term. Probation Officer Richards ultimately concludes that taking all factors into account,
20 a sentence of 18 months is appropriate and serves the intent of the sentencing guidelines. Given her
21 position as an independent party to the sentencing in this case, Probation Officer Richards’ well-
22 reasoned position should be given serious consideration.

23 Living with the guilt, torment and uncertainty of where his life was headed since he
24 committed these acts, then losing two full professional careers, and suffering wide-spread public
25 ridicule in the media has already resulted in Mr. Ellerman being held to a “higher standard” for his
26 actions than other defendants. In this regard, Mr. Ellerman has already been punished in a fashion
27 similar to that of Lewis Libby. However, a key point of differentiation is that Mr. Ellerman, unlike
28 Mr. Libby, is going to serve time in a federal prison. Given that fact, it is clear that whatever prison

1 sentence the Court imposes, Mr. Ellerman is going to have to pick up the pieces of his life and start
2 anew after he is released from custody.

3 In applying the Guidelines' mandate to take all sentencing factors into account to arrive at
4 a sentence that is sufficient, but not greater than necessary, Mr. Ellerman respectfully requests the
5 Court to impose a sentence of 15 months in custody, followed by two years of supervised release.
6 In the context of all the consequences of punishment present in this case, both judicial and collateral,
7 a sentence of 15 months in prison, with two years of supervised release to follow, is the appropriate
8 punishment as it achieves the purpose of holding Mr. Ellerman to a higher standard without
9 becoming excessive, greater than necessary, or overly harsh.

10 **III**

11 **A FINE IS INAPPROPRIATE AND SHOULD NOT BE IMPOSED**

12 _____ After reviewing Mr. Ellerman's finances, Probation Officer Richards appropriately concludes
13 that a fine should not be imposed. The Government suggests otherwise and argues Mr. Ellerman
14 should sell off his assets in order to pay a fine of an unspecified amount. In an attempt to support
15 their position, the Government postulates that if Mr. Ellerman were to sell his house in Sacramento
16 and his Porsche 911 vehicle, he could continue to pay his current living expenses during a 24-month
17 period of incarceration and have \$86,169 remaining.

18 To begin with, the Government's economics regarding Mr. Ellerman's family finances are
19 conjectural, at best. There is no way to know what the family finances will be once Mr. Ellerman
20 begins to serve his sentence. At this point, most of the Mr. Ellerman's cash reserves are gone. It is
21 anticipated they will not last past the end of this year and there are outstanding debts remaining.
22 Regarding the current specifics of Mr. Ellerman's Sacramento home, it was on the market for over
23 a year. However, due to the dramatic drop in the housing market, it remains unsold. As for Mr.
24 Ellerman's 1985 Porsche 911, while the Government assumes it is a viable asset, the fact is the
25 vehicle is not in running condition and is in need of repairs.

26 Secondly, whatever the sentence is, upon completion and release from custody, it is going
27 to take several months for Mr. Ellerman to come close to getting back on his feet financially.
28 Additionally, Mr. Ellerman has several years remaining on his obligation for child support which he

1 will continue to meet. Given the fact that Mr. Ellerman will be going to prison for a significant
2 period of time and then placed on supervised release thereafter with little economic strength, for the
3 government to suggest that a fine is necessary for punishment in this case is way over the top.

4 Finally, counsel for Mr. Ellerman has been representing clients in Federal court for over 25
5 years. This is the first time defense counsel has seen the government argue that a defendant should
6 be ordered to sell his assets to pay a fine. Defense counsel asked Probation Officer Richards if she
7 had seen such a request by the government in any prior case. Probation Officer Richards could not
8 recall such a request in any past case in which she had been involved. The United States Probation
9 Office has investigated the matter of a fine and correctly concluded that Mr. Ellerman cannot afford
10 to pay a fine and none should be ordered. Counsel for Mr. Ellerman concurs in Probation's position
11 and requests that no fine be imposed.

12 **IV**

13 **CONCLUSION**

14 Based on the foregoing, Mr. Ellerman requests the Court to impose a term of imprisonment
15 of 15 months. Based on his inability to pay a fine, it is requested that no fine be imposed. Upon
16 release from imprisonment, it is requested the Court place Mr. Ellerman on supervised release for
17 a period of two (2) years.

18 Additionally, given that Mr. Ellerman has kept all court appearances, has complied with the
19 conditions of pretrial release, and is not either a flight risk or a danger to the community, it is
20 requested that Mr. Ellerman maintain his current release status and allow him to voluntarily
21 surrender himself to the institution designated by the Bureau of Prisons. The requested date and time
22 for Mr. Ellerman's voluntary surrender is Monday, August 27, 2007 at 2:00 p.m.

23 Finally, it is requested that the Court recommend Lompoc Camp as Mr. Ellerman's place of
24 incarceration, subject to security classification and space availability.

25 DATED: July 10, 2007

Respectfully submitted,
LAW OFFICES OF SCOTT L. TEDMON

26 /s/ Scott L. Tedmon
27 SCOTT L. TEDMON
28 Attorney for Defendant Troy L. Ellerman