Libby's sentence not unusually long

Though Bush calls the 30-month prison term 'excessive,' records show defendants convicted of similar crimes served jail time.

By Richard B. Schmitt and David G. Savage, Times Staff Writers
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WASHINGTON — In commuting the sentence of I. Lewis "Scooter" Libby, President Bush said that the former vice presidential aide had suffered enough and that the 30-month prison term ordered up by a federal judge was "excessive."

But records show that the Justice Department under the Bush administration frequently has sought sentences that are as long, or longer, in cases similar to Libby's. Three-fourths of the 198 defendants sentenced in federal court last year for obstruction of justice — one of four crimes Libby was found guilty of in March — got some prison time. According to federal data, the average sentence defendants received for that charge alone was 70 months.

Just last week, the Supreme Court upheld a 33-month prison sentence for a decorated Army veteran who was convicted of lying to a federal agent about buying a machine gun. The veteran had a record of public service — fighting in Vietnam and the Gulf War — and no criminal record. But Justice Department lawyers argued his prison term should stand because it fit within the federal sentencing guidelines.

That Bush chose to make an exception for a political ally is galling to many career Justice Department prosecutors and other legal experts. Federal prosecutors said Tuesday the action would make it harder for them to persuade judges to deliver appropriate sentences.

The critics included some Republicans who said Bush's decision did not square with an administration that had ardently pro law-and-order. "It denigrates the significance of perjury prosecutions," John S. Martin Jr., a former U.S. attorney and federal judge in New York, said of the commutation.

On Tuesday, Bush, speaking to reporters after visiting with wounded military personnel at Walter Reed Army Medical Center, refused to rule out the possibility that he might later grant Libby a full pardon. That would wipe out the felony conviction and allow Libby to retain his law license.

"As to the future, I rule nothing in or nothing out," Bush said — his first public comments on the case since announcing the commutation late Monday.

Sentencing experts said Bush's action appeared to be without recent precedent. They could not recall another case in which someone sentenced to prison had received a presidential commutation without having served any part of that sentence. Presidents have customarily commuted sentences only when someone has served substantial time.

"We can't find any cases, certainly in the last half century, where the president commuted a sentence before it had even started to be served," said Margaret Colgate Love, a former pardon attorney at the Justice Department. "This is really, really unusual."

Said Ellen S. Podgor, a professor at Stetson University law school: "This is a classic...
Bush said Tuesday that in reaching the decision on Libby, "I considered his background, his service to the country, as well as the jury verdict." While vacating the prison sentence, he did not disturb other portions of the sentence, including a $250,000 fine and two years of a form of probation known as supervised release.

"But I felt like the 30-month sentencing was severe; made a judgment, a considered judgment that I believe is the right decision to make in this case, and I stand by it," the president said.

Whether Libby would have to serve probation was in some doubt Tuesday. The sentencing judge in the case, U.S. District Judge Reggie B. Walton, said in court papers that it was unclear whether a defendant who had not done jail time could still be subject to supervisory release. He asked the lawyers to advise him on the issue.

White House Press Secretary Tony Snow, speaking with reporters two hours before Bush made his comments, said the president spent "weeks and weeks consulting with senior members of this White House about the proper way to proceed."

"He spent a lot of time trying to figure out how to maintain the faith in the jury system, and he did that by keeping intact the conviction and some of the punishments," Snow said.

The spokesman took pains to emphasize the penalty still facing Libby, saying: "This is hardly a slap on the wrist, in terms of penalty. It is a very severe penalty."

Some observers took issue with that.

"For Bush to jump in and make that argument … is ludicrous in light of the arguments that his Justice Department makes on a daily basis in federal court," said Douglas A. Berman, a sentencing expert at Ohio State University law school. "Similar arguments are made by lots of other defendants who have a much lower profile and who have their lives destroyed and who are going to rot in prison for a very long time."

The decision to spare Libby also rekindled debate over the federal sentencing guidelines, first enacted in the mid-1980s to ensure that defendants who commit similar crimes receive similar punishment.

Critics of the system, including federal judges, say the rules don't allow for mitigating circumstances in individual cases and can result in overly harsh punishment.

But the Bush administration and the Justice Department have been tough enforcers of and advocates for the guidelines. And they have frequently been critical of federal judges who give lighter sentences.

That made Bush's announcement Monday all the more puzzling. The 30-month sentence was within the range of the federal guidelines, and was issued by a judge whom Bush had appointed to the bench.

Martin, a retired federal judge who has long been a critic of the federal guidelines, said that Bush appeared to be having the same problems with the guidelines that judges have experienced.

"The president felt the guidelines were wrong, and that is not an unreasonable determination," Martin said. "But that is the whole problem with the guidelines. You cannot make individualized decisions. He is reacting to exactly what the guidelines take away from judges."

Several federal prosecutors interviewed by The Times also said they were concerned that Bush's decision would send the wrong message to judges, giving them reason to lighten sentences and undermining the goal of a more uniform justice system.

"Consistency and fidelity to the law are extraordinarily important. We have expended a lot of credibility to get judges to buy off on this," said one senior federal prosecutor who requested anonymity because he was not authorized to speak publicly about the issue.

"I don't know how I am going to advise my people," the prosecutor said. "I cannot tell you how depressed and disgusted people are around here with this decision. It really undercuts law enforcement."

Though Libby's sentence may have seemed overly harsh to the president, it comes at a time when courts are upholding stiff sentences. In 2003, the Supreme Court upheld by a 5-4 vote California's "Three Strikes" law and affirmed a life sentence for a petty thief whose third offense was stealing videotapes from a K-Mart.

Former members of the Bush administration have been sentenced to jail time in case of executive activism as opposed to judicial activism."
circumstances roughly analogous to those of Libby.

A former federal procurement official, David H. Safavian, was sentenced to 18 months in October for lying and concealing his dealings with GOP lobbyist Jack Abramoff. Late last month, a federal judge sentenced J. Steven Griles, the former second-ranking official in the Interior Department, to 10 months in prison for obstructing a Senate investigation into his dealings with Abramoff.

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