

**To
Attorney General Michael Mukasey
Justice Department
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530**

**Request for and Report in Support of Appointment of Outside Special
Counsel to Investigate the Bush Administration's Statements that Iraq Had
Sought Uranium for a Nuclear Weapon, which Violated the Criminal Statutes
18 U.S.C. § 1001 and 18 U.S.C. § 371 that Prohibit Making False and
Fraudulent Statements to Congress and Obstructing It's Functions**

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I. INTRODUCTION

To justify starting the war against Iraq the Bush Administration prior to the war stated that Iraq had weapons of mass destruction. President George W. Bush on October 2, 2002 stated that Iraq “is a threat of unique urgency [and] has developed weapons of mass death”;¹ Vice President Richard Cheney on August 26, 2002 stated that “there is no doubt that Saddam Hussein now has weapons of mass destruction [and] no doubt he is amassing them to use against our friends, against our allies, and against us”;² and on March 16, 2003 he stated that “we believe [Hussein] has, in fact, reconstituted nuclear weapons.”³

To support that claim that Iraq had weapons of mass destruction, the Administration prior to the war repeatedly made the specific claim that Iraq had sought to acquire the uranium fuel for a nuclear weapon. President Bush made two statements directly to Congress about Iraq seeking uranium. Former National Security Advisor and now Secretary of State Condoleezza Rice, former Secretary of State Colin Powell, and former Secretary of Defense Donald Rumsfeld made three similar public statements that they expected would also influence Congress. The purpose behind the five uranium claims that the Administration made prior to the war was to scare Congress into believing that Iraq was a nuclear threat and thereby thwart any efforts by Members of the House or Senate to repeal or modify the Congressional resolution that had empowered President Bush to use military force in Iraq.⁴

At the time of those statements, there were Congressional efforts to delay the start of the war so that United Nations (UN) weapons inspectors, who had so far found no weapons of mass

¹ House Committee on Government Reform Minority (Democratic) Staff, 108th Cong., *Iraq on the Record* (2004), p. 7.*

Reports, documents, and other matters marked with an * in the footnotes indicate that the URL address for said matters is provided at the end of this report.

² *Iraq on the Record*, *supra* note 1, at p. 7.

³ *Id.* at p. 9.

⁴ See Authorization for Use of Military Force Against Iraq Resolution of 2002, Pub. L. No. 107-243, 116 Stat. 1498 [hereinafter Iraq War Res. of 2002].*

destruction in Iraq, could finish their work. Even after the start of the war, Vice President Cheney instructed his then Chief of Staff to tell the press that Iraq had vigorously tried to procure uranium in order to convince Congress that there were legitimate grounds for the war.

The public record detailed in this report not only shows that said officials made or instructed others to make said uranium claims, but also shows that the claims were false and fraudulent.⁵ The public record also provides the direct and circumstantial evidence that proves that they knew the claims were false and fraudulent.

Under the criminal statute 18 U.S.C. § 1001, it is a felony punishable by up to five years imprisonment to make false and fraudulent statements to Congress. Under the criminal statute 18 U.S.C. § 371, it is a felony punishable by up to five years imprisonment to conspire to defraud Congress, which includes conspiring to obstruct its functions, such as the function that Congress had prior to the war to consider whether to repeal the war resolution or modify it so as to delay the start of the war at least until UN weapons inspectors finished their inspections. This present report shows that President Bush violated 18 U.S.C. § 1001 by making said statements to Congress, and that he, Vice President Cheney, and others violated 18 U.S.C. § 371 by conspiring to obstruct the functions of Congress regarding whether to repeal or modify the war resolution.

It has been a matter of public knowledge for years that the uranium claims were false but the Justice Department under your predecessor refused to investigate or appoint an outside Special Counsel pursuant to its regulations,⁶ obviously because the Department often made decisions about who to prosecute based on political considerations.⁷

⁵ The matters in the public record that are cited in this report are available on the Internet and as mentioned in note 1 the URL addresses are provided at the end of this report.

⁶ See 28 C.F.R. §§ 600.1-3.

⁷ The Senate Committee on the Judiciary held a hearing on July 11, 2007 on the issue of the Justice Department's firings of United States Attorneys for political reasons, and Chairman Patrick Leahy stated in his prepared opening statement: "This is a serious matter with serious consequences for the administration of justice. This is about improper political influence of our justice system – it is about the *White House manipulating the*

Attempts have been made to initiate an investigation. Obviously aware that the Justice Department in Washington under your predecessor would never investigate the matter, Congressman Maurice Hinchey, Congressman John Conyers, Jr., and thirty-eight other Members of Congress asked United States Attorney Patrick Fitzgerald in September 2005 to expand his investigation involving the leak of the name of an agent working for the Central Intelligence Agency (CIA) to include “the Administration’s false and fraudulent claims in January 2003 that Iraq had sought uranium for a nuclear weapon.”⁸ They asked Fitzgerald to “investigate whether such claims violated two criminal statutes, 18 U.S.C. § 1001 and 18 U.S.C. § 371, that prohibit

Justice Department into its own political arm. It is about manipulating our justice system to pursue a partisan political agenda.” Patrick Leahy, *Opening Statement of Senator Patrick Leahy* (July 11, 2007), para. 15 (emphasis added);* *see also* United States Senate Committee on the Judiciary, *Notice of Committee Hearing*, regarding hearing on July 11, 2007 entitled *Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys? – Part VI*.*

The Senate Committee on the Judiciary also held an oversight hearing on the firings on July 24, 2007, and Chairman Leahy stated in a prepared statement:

The accumulated and essentially uncontroverted evidence is that political considerations factored into the unprecedented firing of at least nine United States Attorneys last year. Testimony and documents show that the list was compiled based on input from the highest political ranks in the White House, *that senior officials were apparently focused on the political impact of federal prosecutions*, on whether federal prosecutors were doing enough to bring partisan voter fraud and corruption cases, and that the reasons given for these firings were contrived as part of a cover up.

Patrick Leahy, *Statement of Chairman Patrick Leahy* (July 24, 2007), para. 4 (emphasis added);* *see also* United States Senate Committee on the Judiciary, *Notice of Committee Hearing*, regarding hearing on July 24, 2007 entitled *Oversight of the U.S. Department of Justice*.*

Also, the House Committee on the Judiciary has investigated the fact that the Bush Justice Department would fire U.S. Attorneys for either investigating Republicans or refusing to investigate Democrats. At a hearing of the House Committee on the Judiciary on May 10, 2007, Chairman John Conyers, Jr., stated in his prepared statement that the committee had “learn[ed] that several US Attorneys were added to the [Justice Department’s] termination list *only after they decided to pursue criminal investigations involving Republican officials*, or after complaints that they were not pursuing investigations against Democrats.” John Conyers, Jr., *Statement of Chairman John Conyers Jr., Committee on the Judiciary Hearing on DOJ Authorization/Oversight (Attorney General Gonzales)* (May 10, 2007), para. 4 (emphasis added);* *see also* United States House of Representatives Committee on the Judiciary, *Hearing Information*, regarding hearing on May 10, 2007 entitled *Oversight Hearing on the United States Department of Justice*.*

Furthermore, subcommittees of the House Committee on the Judiciary held a hearing on October 23, 2007 on the related issue of selective prosecution. *See* United States House of Representatives Committee on the Judiciary, *Hearing Information*, regarding hearing on October 23, 2007 entitled *Joint Hearing on Allegations of Selective Prosecution: The Erosion of Public Confidence in Our Federal Justice System*.* A video of that hearing is available. *See Id.** One witness at the hearing, Donald C. Shields, submitted a report that stated that the Bush Justice Department was “highly politicized in [its] nationwide investigations and indictments”, and that 77% of such investigations or indictments were of Democrats while only 17% were of Republicans, for a ratio of 4.5 to 1. Donald C. Shields, Ph.D., *An Empirical Examination of the Political Profiling of Elected Officials: A Report on Selective Investigations and/or Indictments by the DOJ’s U.S. Attorneys under Attorneys General Ashcroft and Gonzales* (Oct. 23, 2007), pp. 5, 4, 42.*

⁸ Letter from Congressman Maurice Hinchey to Patrick Fitzgerald (Sept. 15, 2005), para. 1.*

making false and fraudulent statements to Congress and obstructing the functions of Congress.”⁹ They stated that a “motive for making such false and fraudulent uranium claims would have been to thwart Congressional and U.N. efforts to delay the start of the war.”¹⁰

Furthermore, in October 2005 Congressman Jerrold Nadler requested the Justice Department to expand the framework of Fitzgerald’s investigation and empower him to examine whether the leak itself was part of a broader conspiracy to mislead Congress about the necessity of invading Iraq.¹¹ Congressman Nadler cited as an example President Bush’s uranium claim in his January 2003 State of the Union Address.¹²

The Justice Department, including Fitzgerald, has not investigated the above charges made by Members of Congress, nor has it appointed an outside Special Counsel. Fitzgerald is a United States Attorney and is not an outside Special Counsel that the Justice Department can appoint under its regulations.¹³ After probably conferring with the Justice Department, Fitzgerald informed Congressman Hinchey in a letter dated March 7, 2006 that he did not have the authority to investigate the matter.¹⁴ Fitzgerald further stated that he did not plan to seek such authority.¹⁵ That letter as a practical matter served as the Department’s denial of Congressman Nadler’s request to allow Fitzgerald to investigate President Bush’s uranium claim.

Thus the Justice Department under your predecessor refused to investigate charges that the Administration made false and fraudulent uranium claims, and did not appoint an outside

⁹ *Id.* at para. 2.

¹⁰ *Id.* at para. 10.

¹¹ Letter from Congressman Jerrold Nadler to Acting Deputy Attorney General Robert D. McCallum, Jr. (Oct. 20, 2005), paras. 1-2.* Congressman Nadler had also signed Congressman Hinchey’s letter to Fitzgerald.

¹² *Id.* at para. 4, #3.

¹³ 28 C.F.R. §§ 600.1-3.

¹⁴ Letter from Patrick J. Fitzgerald to The Honorable Maurice D. Hinchey (Mar. 7, 2006), para. 2.* Fitzgerald consulted with the Department on other matters such as whether he should testify before a Congressional committee. *See* Letter from Patrick J. Fitzgerald to the Honorable Henry A. Waxman (Mar. 14, 2007), para. 3.*

¹⁵ Letter from Fitzgerald to Hinchey, *supra* note 14, at para. 2. It is not clear whether the Justice Department told Fitzgerald that it would deny any request for such authority. Since Fitzgerald is the United States Attorney in Chicago as a presidential appointee, he might not have wanted the authority to investigate President Bush.

Special Counsel even though the circumstances clearly called for such an appointment. The lack of an investigation was obviously due not only to the practice of politics at the Justice Department in Washington but due to the disregard of the Department's regulation 28 C.F.R. § 45.2(a) requiring disqualification based on conflicts of interest.¹⁶

Therefore, I now formally bring these matters to your "attention" pursuant to 28 C.F.R. § 600.2,¹⁷ and request the Justice Department to appoint a Special Counsel to investigate these matters pursuant to 28 C.F.R. § 600.1.¹⁸ Justice Department regulation 28 C.F.R. § 600.3 requires that such a Special Counsel be selected from outside the federal government.¹⁹

Considering the strong case presented herein, the Department's refusal to appoint an outside Special Counsel would reveal that the Department still engages in selective prosecution.

¹⁶ Justice Department regulation 28 C.F.R. § 45.2(a) states:

Unless [there is a written waiver by a supervisor] ... no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with:

(1) Any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or

(2) Any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

¹⁷ Justice Department regulation 28 C.F.R. § 600.2 states:

When matters are brought to the attention of the Attorney General that might warrant consideration of appointment of a Special Counsel, the Attorney General may:

(a) Appoint a Special Counsel;

(b) Direct that an initial investigation, consisting of such factual inquiry or legal research as the Attorney General deems appropriate, be conducted in order to better inform the decision; or

(c) Conclude that under the circumstances of the matter, the public interest would not be served by removing the investigation from the normal processes of the Department, and that the appropriate component of the Department should handle the matter. [Emphasis added.]

¹⁸ Justice Department regulation 28 C.F.R. § 600.1 states:

The Attorney General, or in cases in which the Attorney General is recused, the Acting Attorney General, *will appoint a Special Counsel* when he or she determines that criminal investigation of a person or matter is warranted and-

(a) That investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present a *conflict of interest* for the Department or other extraordinary circumstances; and

(b) That under the circumstances, it would be in the *public interest* to appoint an *outside Special Counsel* to assume responsibility for the matter. [Emphasis added.]

¹⁹ Justice Department regulation 28 C.F.R. § 600.3(a) states: "An individual named as Special Counsel shall be selected from *outside the United States Government.*" [Emphasis added.]

It should be noted that Special Counsels are not independent counsels that judges appointed under the lapsed Independent Counsel Reauthorization Act, 28 U.S.C. §§ 591-599 (1994), and an Attorney General retains the power to stop a Special Counsel from pursuing a matter and can actually fire a Special Counsel. *See* 28 C.F.R. § 600.7(b),(d).

II. THE URANIUM CLAIMS AND SURROUNDING CIRCUMSTANCES

A. *The Uranium Claims*

The claims that Iraq had sought uranium for a nuclear weapon are cited in the report *Iraq on the Record*²⁰ and its *Database*²¹ that the Minority (Democratic) Staff of the House Committee on Government Reform prepared. That report and *Database* list the five uranium claims among 237 statements about Iraq that President Bush, Vice President Cheney, the then National Security Advisor Rice, the then Secretary of State Powell, and the then Secretary of Defense Rumsfeld made. The original complete statements are available in other parts of the public record. The five uranium claims are as follows:

(1) President Bush submitted to Congress on January 20, 2003 a report entitled *Communication from the President of the United States Transmitting a Report on Matters Relevant to the Authorization for Use of Military Force Against Iraq Resolution of 2002*, and that report is labeled “House Document 108-23”.²² In that report President Bush referred to UN Security Council Resolution 1441 (S.C. Res. 1441) that required Iraq to provide to the UN a complete and accurate declaration of all aspects of its programs to develop chemical, biological and nuclear weapons, and he stated that Iraq’s response (its December 7, 2002 declaration to the UN) was incomplete, inaccurate, and false in part because Iraq in its report “*failed to deal with issues which have arisen since 1998, including ... attempts to acquire uranium and the means to*

²⁰ *Iraq on the Record*, *supra* note 1, at p. 13.

²¹ House Committee on Government Reform Minority (Democratic) Staff, 108th Cong., *Iraq on the Record Database* (2004).^{*} To retrieve from that database all the uranium statements of which there are fifteen including the five statements about Iraq seeking uranium, follow the steps for retrieving those uranium statements set forth at the URL Addresses section of this report, *infra* pp. 104-105, #21. That portion of the database containing the uranium claims is hereinafter referred to as the *Iraq on the Record Uranium Database*.^{*} The five uranium claims are on pages 1-5. The five uranium claims are also in other portions of the public record, *see infra* notes 23, 26, 29, 30, 31.

²² George W. Bush, *Communication from the President of the United States Transmitting a Report on Matters Relevant to the Authorization for Use of Military Force Against Iraq Resolution of 2002*, Public Law 107-243, House Docket No. 108-23 (Jan. 20, 2003), cover [hereinafter Bush, *War Resolution Report*].^{*}

enrich it.”²³ The resolution that Congress passed earlier in October 2002 authorizing President Bush to use military force in Iraq required him to submit the above report to Congress.²⁴

(2) President Bush submitted to Congress on January 28, 2003 a report entitled *Message from the President of the United States Transmitting a Report on the State of the Union*, and that report is labeled “House Document 108-1”.²⁵ In that report President Bush stated:

The [UN’s] International Atomic Energy Agency [IAEA] confirmed in the 1990’s that Saddam Hussein had an advanced nuclear weapons development program, had a design for a nuclear weapon, and was working on five different methods of enriching uranium for a bomb. *The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.* Ou[r] intelligence sources tell us that he has attempted to purchase high strength aluminum tubes suitable for nuclear weapons production. *Saddam Hussein has not credibly explained these activities. He clearly has much to hide [from UN weapons inspectors].*²⁶

When President Bush stated that Hussein had not credibly explained the fact that he had recently sought uranium and was hiding said matter, President Bush was referring Iraq’s above-mentioned declaration to the UN pursuant to S.C. 1441 that required Iraq to disclose to the UN all aspects of its programs to develop nuclear weapons.²⁷ President Bush not only stated that Hussein recently sought the uranium but later in his Address stated that Hussein could “provide one of his hidden weapons to terrorists”, and further stated: “Imagine those 19 hijackers with other weapons, and other plans - this time armed by Saddam Hussein.”²⁸

(3) The then National Security Advisor Rice on January 23, 2003 in an op-ed article in *The New York Times* entitled *Why We Know Iraq Is Lying* stated that Iraq’s declaration to the UN

²³ *Id.* at pp. 4-5 (emphasis added). See also *Iraq on the Record Uranium Database*, *supra* note 21, at para. 15.

²⁴ Iraq War Res. of 2002, Pub. L. No. 107-243, § 4(a), 116 Stat. 1501.

²⁵ George W. Bush, *Message from the President of the United States Transmitting a Report on the State of the Union*, House Docket No. 108-1 (Jan. 28, 2003), cover [hereinafter Bush, *State of the Union Report*].*

²⁶ *Id.* at p. 8 (emphasis added). See also *Iraq on the Record*, *supra* note 1, at p. 13; *Iraq on the Record Uranium Database*, *supra* note 21, at para. 9.

²⁷ See Bush, *State of the Union Report*, *supra* note 25, at p. 8.

²⁸ *Id.* at p. 9.

(which was supposed to disclose all aspects of Iraq's programs to develop nuclear weapons) "*fails to account for or explain Iraq's efforts to get uranium from abroad.*"²⁹

(4) The then Secretary of State Powell on January 26, 2003 in a speech at the World Economic Forum stated that Iraq's said declaration to the UN was not accurate or complete, and he further stated: "*Why is Iraq still trying to procure uranium and the special equipment needed to transform it into material for nuclear weapons?*"³⁰

(5) The then Secretary of Defense Rumsfeld on January 29, 2003 at a press conference stated: "[Hussein's] regime has the design for a nuclear weapon; it was working on several different methods of enriching uranium, and *recently was discovered seeking significant quantities of uranium from Africa.*"³¹

Other Administration officials, including the then Deputy Secretary of Defense Paul Wolfowitz, made additional uranium claims that are not mentioned in *Iraq on the Record* or its accompanying *Database*.³²

Regarding Vice President Cheney's involvement in the above uranium claims, he was behind those claims because his office was in charge of producing papers that Iraq had weapons

²⁹ Condoleezza Rice, *Why We Know Iraq Is Lying*, Op-Ed, New York Times (Jan. 23, 2003), para. 6 (emphasis added).* See also *Iraq on the Record*, *supra* note 1, at p. 13; *Iraq on the Record Uranium Database*, *supra* note 21, at para. 13.

³⁰ Colin Powell, *Remarks at the World Economic Forum*, World Economic Forum (Jan. 26, 2003), paras. 20, 26 (p. 3 if printed) (emphasis added).* See also *Iraq on the Record Uranium Database*, *supra* note 21, at para. 11.

³¹ Donald Rumsfeld, United States Department of Defense, News Transcript, *DoD News Briefing – Secretary Rumsfeld and Gen. Myers* (Jan. 29, 2003), p. 1 (emphasis added).* See also *Iraq on the Record*, *supra* note 1, at 13; *Iraq on the Record Uranium Database*, *supra* note 21, at para. 5.

³² The then Deputy Secretary of Defense Wolfowitz on January 23, 2003 in a speech to the Council on Foreign Relations stated that Iraq's December 7 declaration to the UN contained "no mention of Iraqi efforts to procure uranium from abroad." Paul Wolfowitz, *Iraq: What Does Disarmament Look Like?*, Council on Foreign Relations (Jan. 23, 2003), p. 4.* The White House on January 23, 2003 issued a public report that stated that Iraq's declaration failed to disclose "efforts to procure uranium from abroad." The White House, *What Does Disarmament Look Like?* (Jan., 2003), p. 4;* see also *Kondracke Falsely Asserted Niger Claim "was never one of the major arguments" for War, Wilson's Report "was never accepted by anybody"*, Media Matters For America (Oct. 19, 2005), para. 7.* The then Deputy National Security Advisor Stephen Hadley in a February 16, 2003 op-ed article in the *Chicago Tribune* stated: "According to British intelligence, the [Hussein] regime has tried to acquire natural uranium from abroad." See *Id.* at para. 8.

of mass destruction, his office viewed attacks on the Administration's uranium claims as direct attacks on him, and he personally directed the campaign to publicly bolster the Administration's uranium claims in July 2003 and to discredit a critic of those claims.

Vice President Cheney's involvement in the uranium claims was revealed in the case against his Chief of Staff, I. Lewis "Scooter" Libby. That case started when Fitzgerald was assigned to investigate the leak of the name of an agent working for the CIA. A grand jury indicted Libby. In that indictment Fitzgerald charged that Libby lied about his involvement in the campaign to discredit that agent's husband, Joseph Wilson, who had criticized the Administration's uranium claims.³³ Fitzgerald basically charged Libby with lying about discussions that he had with reporters about the fact that Wilson's wife was a CIA agent. Libby was not formally charged with leaking information but rather charged with lying about the discussions that he had with the press concerning the agent. However the pleadings and evidence in the Libby case reveal much more information than just those discussions that Libby had with reporters.

According to a document of Craig Schmall that Libby's lawyers introduced at his trial, Schmall told federal agents that "*Libby was in charge* within the administration (or at least the White House side) for *producing papers arguing the case for Iraqi WMD* and ties between Iraq and al-Qaida, which explains Libby's and the Vice President's interest in the Iraq/Niger/Uranium case."³⁴ Schmall was the CIA briefer for Libby and Vice President Cheney.³⁵

³³ See *Indictment* (Oct. 28, 2005), United States v. Libby, Cr. No. 05-394 (D.D.C. Oct. 28, 2005) (charging in Count 1 that Libby obstructed justice by making false and misleading statements to the grand jury in violation of 18 U.S.C. § 1503, in Counts 2-3 that he made false and fraudulent statements to federal agents in violation of 18 U.S.C. § 1001(a)(2), and in Counts 4-5 that he committed perjury by making false statements under oath to the grand jury in violation of 18 U.S.C. § 1623).*

³⁴ Defense Exhibit 421, *Message by Craig Schmall to CIA Employees* (Jan. 9, 2004), p. 2 (DX421.2), United States v. Libby, Cr. No. 05-394 (D.D.C. Jan. 24, 2007) (emphasis added).*

³⁵ *Id.*; Government Exhibit 1, Transcript of I. Lewis Libby (Mar. 5, 2004), p. 27, United States v. Libby, Cr. No. 05-394 (D.D.C. Feb. 7, 2007) [hereinafter *Libby Trans. #1*].*

In Libby's Indictment, Fitzgerald noted that Wilson had previously stated in the press anonymously that President Bush's claim in his State of the Union Address about Iraq seeking uranium from Africa was false.³⁶ Then in a July 6, 2003 *New York Times* op-ed article entitled *What I Didn't Find in Africa*, Wilson publicly stated that at the request of the CIA he had taken a trip to Niger in February 2002 to investigate the claim that Iraq had sought or obtained uranium from Niger and he reported back that he doubted that Iraq had obtained the uranium.³⁷ Wilson in his article referred to the uranium claim that President Bush made in his State of the Union Address, and Wilson actually stated that the Bush Administration "*twisted [intelligence] to exaggerate the Iraqi threat*" and that if the Administration ignored the information that he provided "because it did not fit certain preconceptions about Iraq, *then a legitimate argument can be made that we went to war under false pretenses.*"³⁸ Fitzgerald in a court pleading stated that Wilson's op-ed article "was viewed in the Office of Vice President as a *direct attack on the credibility of the Vice President (and the President) on a matter of signal importance: the rationale for the war in Iraq.*"³⁹

During Libby's trial Fitzgerald introduced transcripts of the testimony that Libby gave to the grand jury.⁴⁰ In a question to Libby before the grand jury Fitzgerald quoted Wilson's claim in his article that he had "little choice but to conclude that some of the intelligence related to Iraq's nuclear weapons program was twisted to exaggerate the Iraqi threat."⁴¹ Fitzgerald made the statement that Wilson's article "was a direct accusation that the *Vice President was*

³⁶ *Indictment, supra* note 33, at pp. 3-6.

³⁷ *Id.* at p. 6.

³⁸ Defense Exhibit 707B, Joseph C. Wilson 4th, *What I Didn't Find in Africa*, Op-Ed, New York Times (July 6, 2003), paras. 15, 2, 18, United States v. Libby, Cr. No. 05-394 (D.D.C. Jan. 25, 2007) (emphasis added).*

³⁹ *Government's Response to Defendant's Third Motion to Compel Discovery* (Apr. 5, 2006), p. 18, United States v. Libby, Cr. No. 05-394 (D.D.C. Apr. 5, 2006) (emphasis added).*

⁴⁰ *Libby Trans. #1, supra* note 35; Government Exhibit 2, Transcript of I. Lewis Libby (Mar. 24, 2004), United States v. Libby, Cr. No. 05-394 (D.D.C. Feb. 7, 2007) [hereinafter *Libby Trans. #2*].*

⁴¹ *Libby Trans. #1, supra* note 35, at pp. 77-78.

dishonest, if you followed the inferences that Mr. Wilson made, that the President was dishonest and that the *country was misled into war*.”⁴²

Vice President Cheney was behind the Administration’s January 2003 uranium claims because he was the one who reacted to the criticism of those claims by directing the campaign to bolster those claims and discredit Wilson’s criticism of those claims. The transcripts that Fitzgerald introduced at Libby’s trial reveal that Libby testified that in the week of July 7, 2003 following Wilson’s article, Vice President Cheney thought that it was very important to publicly rebut Wilson’s article and to support the uranium claim that President Bush had made in his State of the Union Address, and accordingly Vice President Cheney on July 7, 2003 instructed Libby to talk to a reporter, Judy Miller, about the sections of the October 2002 National Intelligence Estimate (NIE) and another document dated January 24, 2003, which contained the statements that Iraq vigorously tried to procure uranium.⁴³

⁴² *Id.* at p. 80 (emphasis added).

Also, Fitzgerald asked Libby: “Is it fair to say that that was the – perhaps the most serious attack on the administration’s credibility thus far in the Presidential term?” *Id.* Libby responded: “It was a serious accusation.” *Id.* Fitzgerald further asked Libby: “[C]an you think of any other time in the administration where someone directly came out by name and accused the administration of *deliberately exaggerating and twisting intelligence with regard to specific facts*?” *Id.* at p. 81 (emphasis added). Fitzgerald in referring to the sixteen words that President Bush used in making his uranium claim in his 2003 State of the Union Address, further asked Libby: “[G]iven that the sixteen words were believed to have been part of a speech *setting up the administration’s case for war against Iraq*, is it fair to say that this was a very, very serious matter during the week of July 7th through the 14th at the White House?” *Id.* (emphasis added). Libby responded: “Yes, sir.” *Id.*

⁴³ Libby testified:

[A]s we started to go through the week of July 7, [2003] after the Wilson report, the Vice President thought it was *very important that the NI[E] – what was in the NIE become known publicly* because the National Intelligence Estimate, the NIE, came out in October of ’02 ... six months after Ambassador Wilson’s trip and had concluded that Iraq had tried to buy uranium from Niger, and this – the NIE is the consensus document of the committee, and *this section of the NIE is quite straight-forward, Iraq vigorously began trying to procure uranium. So flat out statement which supports what the President said in the end in the State of the Union. And so we thought it was important that the NIE come out.*

Libby Trans. #1, supra note 35, at p. 116 (emphasis added).

Libby then referred to another document dated January 24, 2003, and he testified:

The January 24 document had the exact same content as the NIE, word-for-word as the NIE, and also saying that *Iraq had vigorously begun trying to procure uranium from Niger*. And it listed a couple of examples, not just Niger but two other examples....

So both in October of 2002, and in January 24, three days before the State of the Union, the CIA in writing sent to the White House this consensus language which said *Iraq had tried to*

Libby admitted that he had reviewed the NIE in 2002 or 2003 and knew that “there are some sections towards the back [of it] in which [the] State Department expresses some doubts about [the] uranium [claim].”⁴⁴

Libby testified that on July 12, 2003, Vice President Cheney dictated to him certain things that he wanted him to tell the press,⁴⁵ and also on *deep background* he wanted Libby to talk to the press about what was in the NIE and make “it very clear that it was the NIE six months after Wilson’s trip where the CIA and the intelligence community was saying affirmatively that [Iraq] had tried to procure uranium.”⁴⁶

Libby testified that at first he told Vice President Cheney there was a problem in talking to the press about the NIE because it was a classified document but Vice President Cheney told him that “he would talk to the President and get the President’s approval for us to use the document.”⁴⁷ Libby testified that the “President came back to the Vice President and said, yes, it would be okay, or I should go talk to somebody.”⁴⁸ Libby further testified that Vice President Cheney “told me he had talked to the President and we should go ahead and, you know, talk to the press about the NIE.”⁴⁹

buy uranium from Niger, the exact point that the President was making in the State of the Union. That’s what the Vice President had seen.... And it was pretty definitive against what Ambassador Wilson was saying... So we thought it was important that Judy Miller [who was a reporter], or somebody, report this... [T]he Vice President instructed me to go talk to Judy Miller, to lay this out for her.

Id. at pp. 116-117 (emphasis added).

Libby later testified that the date of this discussion was July 7, 2003. *Libby Trans. #2, supra* note 40, at p.

33.

⁴⁴ *Libby Trans. #1, supra* note 35, at p. 19.

⁴⁵ *Id.* at pp. 173-174, 177-181.

⁴⁶ *Id.* at pp. 177, 179, 181, 182. Under ‘deep background’, the reporter does not reveal the identity of the source. *Id.* at p. 13.

⁴⁷ *Id.* at p. 117.

⁴⁸ *Id.* at p. 118.

⁴⁹ *Libby Trans. #2, supra* note 40, at p. 49.

President Bush has admitted that he declassified the NIE and did so because he “wanted people to see the truth” and “to get a better sense for why I was saying what I was saying in my speeches.” The White House, Press Release, *President Bush Discusses Global War on Terror* (Apr. 10, 2006), paras. 68-70 (pp. 7-8 if printed).*

Libby testified that on July 8, 2003 he met with Miller, and showed her a redacted copy of the NIE that he created and he affirmed in response to questions that he told her that the NIE stated that Iraq was vigorously trying to procure uranium.⁵⁰ In response to a question Libby affirmed that he did not show Miller the relevant portions of the whole NIE but only his redacted version.⁵¹

Libby testified that in response to Vice President Cheney's instruction of July 12, 2003 to tell the press that the NIE stated that Iraq had tried to procure uranium Libby that day told four reporters, including Miller, that the NIE stated that Iraq had tried to procure uranium.⁵²

A jury convicted Libby of most of the counts and the judge sentenced him to thirty months in prison but President Bush commuted his sentence.⁵³

Thus although Vice President Cheney was not one of the Bush Administration officials who had made public statements that Iraq had sought uranium for a nuclear weapon, he was obviously involved in spreading the uranium story as a rationale for the war in January 2003 because his office was in charge of producing papers arguing that Iraq had weapons of mass destruction. It was Vice President Cheney who reacted to the criticism of the uranium claims. The role that Vice President Cheney played in promulgating the uranium claims in July he obviously also played in January.

As revealed later, Vice President Cheney was interested in the uranium issue from the beginning, which apparently led to the CIA sending Wilson to Niger to investigate the claim.⁵⁴

⁵⁰ *Libby Trans. #1, supra* note 35, at pp. 114, 124; *Libby Trans. #2, supra* note 40, at pp. 29-30, 33-35, 56, 64-65. Apparently Miller was not to disclose that Libby was the source of the information. *Id.* at p. 44.

⁵¹ *Libby Trans. #2, supra* note 40, at p. 35.

⁵² *Libby Trans. #1, supra* note 35, at pp. 173, 177-193.

⁵³ See Carol Leonnig & Amy Goldstein, *Libby Found Guilty in CIA Leak Case*, Wash. Post (Mar. 7, 2007), p. A1 (reporting that Libby was found guilty on March 6, 2007 of all counts except one of the two counts of making false and fraudulent statements to federal agents);* Carol Leonnig & Amy Goldstein, *Libby Given 21/2-Year Prison Term*, Wash. Post (June 6, 2007), p. A1;* Amy Goldstein, *Bush Commutes Libby's Prison Sentence*, Wash. Post (July 3, 2007), p. A1.*

B. Significance of the Administration's Uranium and Nuclear Claims

The report *Iraq on the Record* states: “Another significant component of the Administration’s nuclear claims was the assertion that Iraq had sought to import uranium from Africa. As one of few *new pieces of intelligence*, this claim was *repeated multiple times by Administration officials as proof that Iraq had reconstituted its nuclear weapons program.*”⁵⁵

That report also states:

In their potential for destruction and their ability to evoke horror, nuclear weapons are in a class by themselves. As Dr. David Kay, former special advisor to the Iraq Survey Group, testified on January 28, 2004: “all of us have and would continue to put nuclear weapons in a different category. It’s a single weapon that can do tremendous damage, as opposed to multiple weapons that can do the same order of damage.... I think we should politically treat nuclear as ... differen[t].”

For precisely this reason, the Administration’s statements about Iraq’s nuclear capabilities had a large impact on congressional and public perceptions about the threat posed by Iraq. Many members of Congress were more influenced by the Administration’s nuclear assertions than by any other piece of evidence.... Numerous members of Congress stressed Iraq’s nuclear threat in their floor statements explaining their support of the [war] resolution.⁵⁶

The House Judiciary Committee Minority (Democratic) Staff issued a report entitled *The Constitution in Crisis* that mentions the above five uranium claims and which further states that according to a press report the White House believed that “[e]very layman understood the connection between uranium and the bomb.”⁵⁷ According to that press report the uranium claim “was the easiest way for the Bush administration to raise alarms.”⁵⁸

⁵⁴ See *infra* pp. 15-17.

⁵⁵ *Iraq on the Record*, *supra* note 1, at p. 13 (emphasis added).

⁵⁶ *Id.* at pp. 7-8 (footnote omitted, emphasis added).

⁵⁷ House Judiciary Committee Minority (Democratic) Staff, 109th Cong., *The Constitution in Crisis* (Final Investigative Report, August, 2006), pp. 70-71, 35.* (The endnote in support of the above quotation on page 35 is endnote 195: Barton Gellman, *A Leak, Then a Deluge, Did a Bush Loyalist, Trying to Protect the Case for War in Iraq, Obstruct an Investigation into Who Blew the Cover of a Covert CIA Operative?*, Wash. Post (Oct. 30, 2005), p. A1.*)

⁵⁸ *The Constitution in Crisis*, *supra* note 57, at p. 35.

Obviously referring to the need to obtain Congressional authorization for the war against Iraq, the then Deputy Secretary of Defense Wolfowitz stated: “*The truth is that for reasons that have a lot to do with the U.S. government bureaucracy we settled on the one issue that everyone could agree on which was weapons of mass destruction as the core reason [for the war]....*”⁵⁹

C. The Whole Truth Which Showed the Uranium Claims to Be False and Fraudulent

The full Senate Select Committee on Intelligence released on July 9, 2004 an investigative report entitled *Report of the Select Committee on Intelligence on the U.S. Intelligence Community’s Prewar Intelligence Assessments on Iraq* (hereinafter Senate Intelligence Committee Report, or Senate Report).⁶⁰ That report cites President Bush’s above two uranium statements and Secretary Powell’s uranium statement,⁶¹ and reveals many things including significant matters that President Bush and his senior officials did not disclose.

According to that report, on February 12, 2002 the Defense Intelligence Agency (DIA) issued a report, based on an earlier CIA report, which stated that a foreign government service had reported that Niger had agreed to sell 500 tons of uranium to Iraq.⁶² The DIA report concluded that Iraq probably was searching abroad for natural uranium for its nuclear weapons program but the report did not include any judgments on the credibility of the initial reporting on the claim.⁶³

⁵⁹ Paul Wolfowitz, U.S. Department of Defense, News Transcript, *Deputy Secretary Wolfowitz Interview with Sam Tannenhaus, Vanity Fair* (May 9, 2003), p. 14 (emphasis added).* Wolfowitz also mentioned other reasons for the war. *Id.*

⁶⁰ Senate Select Committee on Intelligence, *Report of the Select Committee on Intelligence on the U.S. Intelligence Community’s Prewar Intelligence Assessments on Iraq*, Senate Report No. 108-301 (2004) [hereinafter *Senate Intelligence Committee Report*].*

⁶¹ *Id.* at pp. 63-64, 66.

⁶² *Id.* at pp. 37-38.

⁶³ *Id.* at p. 38.

Vice President Cheney read that DIA report and asked his morning briefer for the CIA's analysis of the issue.⁶⁴ The CIA issued a report stating that the earlier report lacked crucial details, some of the information in the report contradicted reporting by the American embassy in Niger, and that the CIA was trying to determine if the information could be corroborated.⁶⁵ The CIA sent a copy of that report to Vice President Cheney.⁶⁶

On February 20, 2002, the CIA asked a former ambassador to go to Niger to investigate.⁶⁷ Although the Senate Intelligence Committee Report does not name the ambassador, it obviously was referring to Wilson. The ambassador went to Niger on February 26, 2002 and interviewed former government officials, and he told the Senate Committee's staff that he told United States officials while in Niger that there was "nothing to the story."⁶⁸

In early March 2002, Vice President Cheney asked his morning briefer for an update on the Niger uranium issue and CIA analysts sent an update to the briefer that stated that the foreign government service that provided the original report was unable to provide new information, but continued to assess that its report was reliable.⁶⁹ That update also mentioned that the CIA would on March 5 be debriefing a source who may have information related to the alleged sale.⁷⁰

On March 5, 2002 two CIA officers from the Directorate of Operations debriefed the ambassador and they wrote a draft intelligence report that was disseminated on March 8, 2002.⁷¹

The CIA analysts did not believe the report supplied much new information or that it clarified the story on the alleged Iraq-Niger uranium deal and therefore did not use the report to

⁶⁴ *Id.*

⁶⁵ *Id.* at pp. 38-39.

⁶⁶ *Id.* at p. 39.

⁶⁷ *Id.* at pp. 40-41.

⁶⁸ *Id.* at p. 42.

⁶⁹ *Id.* at p. 43.

⁷⁰ *Id.*

⁷¹ *Id.*

produce any further analytical products or highlight the report for policy makers.⁷² Therefore the CIA's briefer of Vice President Cheney did not brief the Vice President on the report.⁷³ The Senate Report is silent as to whether Vice President Cheney ever read the original report or knew about it from sources other than the CIA officer who briefs him.

The Senate Intelligence Committee Report states that the CIA actually cleared two proposed presidential speeches that the White House's National Security Council (NSC) sent to the CIA in September 2002 that contained the claims that Iraq was caught trying to purchase 500 tons of uranium and that Iraq had sought large amounts of uranium from Africa.⁷⁴ President Bush did not use the approved language publicly.⁷⁵

The Senate Report states that the British government on September 24, 2002 published a White Paper that stated "there is intelligence that Iraq has sought the supply of significant quantities of uranium from Africa."⁷⁶ That White Paper known as a dossier was entitled *Iraq's Weapons of Mass Destruction*, and it did not state that Iraq's seeking of uranium was *recent*.⁷⁷

Furthermore in a statement that the CIA released the following year on July 11, 2003, CIA Director George Tenet stated that prior to the release of the British dossier (White Paper),

⁷² *Id.* at p. 46.

⁷³ *Id.*

⁷⁴ *Id.* at pp. 49, 51.

⁷⁵ *Id.* at pp. 49, 51.

⁷⁶ *Id.* at p. 50.

⁷⁷ The British White Paper, which was released to the public, stated: "As a result of the intelligence we *judge* that Iraq has ... sought significant quantities of uranium from Africa, despite having no active civil nuclear power programme that could require it ..." Joint Intelligence Committee, *Iraq's Weapons of Mass Destruction, The Assessment of the British Government* (2002), pp. 5-6 (emphasis added).^{*} That judgment was based on the above-mentioned statement that "there is intelligence that Iraq has sought the supply of significant quantities of uranium from Africa." *Id.* at p. 25. The British White Paper also stated: "Uranium has been sought from Africa that has no civil nuclear application in Iraq ..." *Id.* at p. 17. In his statement to Parliament concerning the report, Prime Minister Tony Blair stated: "In addition, we know Saddam has been trying to buy significant quantities of uranium from Africa, though we do not know whether he has been successful." Prime Minister Tony Blair, *Prime Minister's Iraq Statement to Parliament* (Sept. 24, 2002), para. 19 (p. 2 if printed).^{*} Thus the British White Paper (dossier) did not state that Iraq *recently* sought uranium from Africa, nor did Blair. A later British report stated that the uranium claims in the above dossier and by extension President Bush's uranium claim in his State of the Union Address were well founded. The Lord Butler, *Review of Intelligence on Weapons of Mass Destruction* (2004), pp. 121-125.^{*}

the CIA had warned the British government about making the uranium claim in its dossier.⁷⁸ Tenet stated that in the fall of 2002 the British government told the CIA that it was planning to mention in an unclassified (public) dossier reports about Iraqi attempts to obtain uranium in Africa.⁷⁹ Tenet stated: “Because we viewed the reporting on such acquisition attempts to be inconclusive, we expressed reservations about its inclusion but our [British] colleagues said they were confident in their reports and left it in their document.”⁸⁰ Tenet further stated: “In September and October 2002 before Senate Committees, senior intelligence officials in response to questions told members of Congress that we differed with the British dossier on the *reliability* of the uranium reporting.”⁸¹ (Tenet’s reference about telling things to Senate Committees would be to certain committees whose members cannot divulge the secret information to all other Members of Congress.)

Thus the British government in its White Paper had not asserted that Iraq *recently* sought uranium and the CIA had actually warned the British government against even mentioning that Iraq had sought uranium from Africa.

The Senate Intelligence Committee Report reveals that a CIA analyst in September 2002 suggested to a staff member of the White House’s NSC that references in a proposed speech about Iraqi attempts to acquire uranium from Africa be removed.⁸²

The Senate Report states that on October 1, 2002 the National Intelligence Council (NIC) published the above mentioned classified National Intelligence Estimate (NIE), which was entitled *Iraq’s Continuing Programs for Weapons of Mass Destruction*.⁸³ The NIE stated that

⁷⁸ George J. Tenet, *Statement by George J. Tenet, Director of Central Intelligence* (July 11, 2003), para. 6.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at para. 7 (emphasis added).

⁸² *Senate Intelligence Committee Report*, *supra* note 60, at p. 51.

⁸³ *Id.* at pp. 51-54.

Iraq had about 550 tons of uranium in country that the IAEA inspected annually but that Iraq “also began vigorously trying to procure uranium ore and yellowcake; acquiring either would shorten the time Baghdad needs to produce nuclear weapons.”⁸⁴ As an apparent source for that view, the NIE mentioned that a foreign government service had reported that as of early 2001 Niger planned to send several tons of pure uranium (yellowcake) to Iraq but in 2001 the countries were still working out arrangements for the deal, which could have been for up to 500 tons of yellowcake.⁸⁵ The NIE also mentioned reports that indicated that Iraq also sought uranium from Somalia and possibly the Democratic Republic of the Congo.⁸⁶ The NIE further stated: “We cannot confirm whether Iraq succeeded in acquiring uranium ore and/or yellowcake from these sources.”⁸⁷

Concerning the above claims about Iraq seeking uranium, the NIE contained the dissenting opinion of the State Department’s Bureau of Intelligence and Research (INR) that the “claims of Iraqi pursuit of natural uranium in Africa are ... highly dubious.”⁸⁸

The Senate Report states that on October 4, 2002 the White House’s NSC sent to the CIA a draft of a speech that President Bush was to give in Cincinnati that contained the statement that Iraq had been caught attempting to purchase up to 500 tons of uranium from Africa.⁸⁹ Due to the concerns expressed by a CIA Iraq nuclear analyst, the CIA’s Associate Deputy Director for Intelligence on October 5, 2002 faxed a memo to the NSC’s Deputy National Security Advisor (Stephen Hadley) and to the speechwriters suggesting that they remove the uranium claim from the speech because the amount was in dispute, the claim was debatable, the CIA had told

⁸⁴ *Id.* at pp. 52, 54.

⁸⁵ *Id.* at p. 52.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at pp. 53-54.

⁸⁹ *Id.* at p. 55.

Congress that the British had exaggerated the issue, and Iraq already had 550 tons of uranium in its inventory.⁹⁰

The NSC then sent to the CIA another draft of the speech containing a revised statement that Iraq had been caught attempting to purchase substantial amounts of uranium from Africa.⁹¹ On October 6, 2002 the CIA's Associate Deputy Director believed that the NSC had not addressed the uranium information in its later draft and alerted the CIA Director (Tenet).⁹² The CIA Director responded by telling the Deputy National Security Advisor (Hadley) that President Bush should not provide any facts on the issue in the speech because CIA analysts told him that the "reporting [on the uranium claim] was weak."⁹³ After the White House's NSC removed the claim from the speech, the CIA on October 6, 2002 sent a second fax to the White House which stated: "[M]ore on why we recommend removing the sentence about procuring uranium oxide from Africa: The evidence is weak [, and] we have shared [that view] ... with Congress, telling them that the Africa story is overblown and ... we differed with the British."⁹⁴ On October 7, 2002, President Bush delivered his speech in Cincinnati and did not make the uranium claim.⁹⁵

The Senate Report reveals that on or about October 11, 2002 the CIA received copies of documents concerning a purported uranium deal between Iraq and Niger.⁹⁶ The Iraq nuclear analyst at the State Department's INR received a fax of the documents on or about October 15,

⁹⁰ *Id.* at pp. 55-56.

⁹¹ *Id.* at p. 56.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at pp. 56-57.

⁹⁵ *Id.* at p. 57.

⁹⁶ *Id.* at p. 58.

2002 and sent an e-mail to Intelligence Community (IC) colleagues in which he stated that one of the documents had “a funky Emb. of Niger stamp (to make it look official, I guess).”⁹⁷

The Senate Report states that in response to Iraq’s declaration to the UN of December 7, 2002, the State Department on December 19, 2002 published a fact sheet on its web page that stated that Iraq’s declaration “ignores efforts to procure uranium from Niger.”⁹⁸ In response the Nigerien Prime Minister on December 24, 2002 declared publicly that Niger had not sold uranium to Iraq and had not been approached since he took office in 2000.⁹⁹ On January 6, 2003, the UN’s IAEA requested information on the alleged Iraq-Niger uranium deal mentioned in the State Department’s fact sheet.¹⁰⁰

The Senate Report reveals that on January 13, 2003 (which was one week before President Bush and his said senior officials made their first uranium claim), the Iraq nuclear analyst for the State Department’s INR sent another e-mail to several Intelligence Community (IC) analysts, including at the CIA, outlining the reasons why he believed that the document supposedly supporting the Iraq-Niger uranium deal “probably is a hoax” and “probably is a forgery.”¹⁰¹

After the State Department’s INR alerted the CIA and Defense Intelligence Agency about the problems with the documents, said agencies published assessments that, as summarized in the Senate Report, stated that “Iraq *may* have been seeking uranium from Africa.”¹⁰²

⁹⁷ *Id.*

⁹⁸ *Id.* at pp. 60-61. It appears that the only other time that American officials prior to January 2003 publicly stated that Iraq had sought uranium was as noted in a newspaper article that reported that unnamed American officials and United Nations diplomats stated on December 13, 2002 that Iraq’s December 7 declaration to the UN left open a host of questions including why was Iraq seeking to buy uranium in Africa in recent years. David E. Sanger and Julia Preston, *Threats and Responses: Report by Iraq; Iraq Arms Report Has Big Omissions, U.S. Officials Say*, New York Times (Dec. 13, 2002), paras. 2-3.*

⁹⁹ *Senate Intelligence Committee Report, supra* note 60, at p. 61.

¹⁰⁰ *Id.* at p. 62.

¹⁰¹ *Id.*

¹⁰² *Id.* at pp. 77, 62, 64 (emphasis added).

Concerning the State of the Union Address of January 28, 2003, the Senate Report reveals that a NSC official at the White House and a CIA official discussed the draft of that speech that the White House had sent to the CIA that stated “*we know* that [Hussein] has recently sought to buy uranium in Africa.”¹⁰³ The final draft that President Bush actually used stated that the “*British government has learned* that Saddam Hussein recently sought significant quantities of uranium from Africa.”¹⁰⁴ Both officials stated that the CIA official did not express any concerns about the credibility of the uranium reporting, and there was never a discussion on the credibility of the information.¹⁰⁵ The stated reason for the switch from ‘we’ to the British was the desire to identify in the speech a source for the uranium claim that was not classified, and the British White Paper was not classified while the American source was classified.¹⁰⁶

However, the White House’s original draft of the Address did not name any source for the uranium claim but merely said “we know”. There was really no need to further identify sources. Concerning sources for other claims against Hussein, including the aluminum tubes claim made immediately after the uranium claim, President Bush cited “intelligence sources” without providing any specifics on the sources.¹⁰⁷ The obvious reason for the switch from “we know” to the “British government has learned” was that the CIA was not comfortable with the “we” especially since that might include the CIA Director who had told the White House that the President should not make any uranium claim because CIA analysts believed that it was weak.

It is interesting to note that the Senate Intelligence Committee Report states that the CIA official who reviewed the State of the Union Address with the NSC official did not express any

¹⁰³ *Id.* at pp. 64-65 (emphasis added). The CIA official was from the CIA’s WINPAC (Center for Weapons Intelligence, Nonproliferation and Arms Control). *Id.* at pp. 64-65, 440.

¹⁰⁴ *Id.* at p. 66 (emphasis added).

¹⁰⁵ *Id.* at pp. 65-66.

¹⁰⁶ *Id.*

¹⁰⁷ Bush, *State of the Union Report*, *supra* note 25, at pp. 8, 9.

concerns about the credibility of the reporting on the uranium claim, but the Senate Report fails to mention that in a statement released one year prior to the Senate Report, CIA Director Tenet admitted that the CIA had raised several concerns with the NSC about the fragmentary nature of the intelligence on the uranium claim in the Address.¹⁰⁸ The Senate Report does mention that the CIA Director (Tenet) testified that on January 27, 2003 (the day before the State of the Union Address) he was provided with a hardcopy of the State of the Union Address while at an NSC meeting but never read it.¹⁰⁹ The Senate Report is silent on whether anyone asked Tenet whether he had any discussions that day with anyone about the speech or the uranium claim in it, and whether he raised the same concerns about the uranium claim in that speech as he did concerning the Cincinnati speech.

The Senate Report states that according to the National Intelligence Officer (NIO), the NSC on January 24, 2003 “believed the nuclear case [against Iraq] was weak” and requested additional information from the American Intelligence Community (IC).¹¹⁰ The NIO then provided the NSC with sections of the earlier October 2002 NIE, which included the NIE text that Iraq began ‘vigorously trying to procure uranium ore and yellowcake,’ which outlined possible uranium acquisition attempts in Niger, Somalia, and possibly the Congo, and which included the NIE text that the Intelligence Community did not know the status of the Niger arrangement.¹¹¹ However, the NSC members would have had the NIE report for months and would have already read it.

The above report of January 24, 2003 from the NIO to the NSC that mentioned the previous October 2002 NIE certainly appears to be the January 24 report that Libby mentioned in

¹⁰⁸ See *infra* pp. 27-28.

¹⁰⁹ *Senate Intelligence Committee Report*, *supra* note 60, at p. 64.

¹¹⁰ *Id.* at p. 240.

¹¹¹ *Id.*

his grand jury testimony.¹¹² Thus the report that Libby mentioned was not a new and independent report that buttressed the uranium claim but only a repetition of the prior NIE that had also contained the State Department's view that the uranium claim was highly dubious.¹¹³

According to the White House website, President Bush chairs the NSC as President, and the regular attendees at NSC meetings include the Vice President, the Secretary of State, the Secretary of Defense, and the Assistant to the President for National Security Affairs (National Security Advisor).¹¹⁴ Thus the very people who claimed in January 2003 that Iraq had sought uranium were the key members of a council that believed in January 2003 that the nuclear case against Iraq was weak.

The Senate Intelligence Committee Report also reveals that after President Bush made his uranium claim in his State of the Union Address on January 28, 2003, the American government a few days later on February 4, 2003 informed the UN's IAEA that it "cannot confirm [the uranium] reports."¹¹⁵ On that date in apparent response to the IAEA's request for information on the uranium claim, the American government gave the IAEA copies of documents that supposedly supported the uranium claim.¹¹⁶

On March 3, 2003, the IAEA told the American government that the uranium documents were forgeries.¹¹⁷

After the United States on February 4, 2003 gave the UN's IAEA the forged documents along with the warning that the uranium reports could not be confirmed, it does not appear that the senior members of the Bush Administration ever again publicly put their own names behind

¹¹² See *supra* p. 11, including note 43.

¹¹³ See *Senate Intelligence Committee Report*, *supra* note 60, at pp. 52-54.

¹¹⁴ The White House, *National Security Council*, para. 2.*

¹¹⁵ *Senate Intelligence Committee Report*, *supra* note 60, at pp. 67-68.

¹¹⁶ *Id.* at pp. 62, 67.

¹¹⁷ *Id.* at p. 69.

the claim that Iraq had attempted to acquire uranium from Africa.¹¹⁸ The next day on February 5, Secretary Powell gave a speech to the UN in which he did not make any uranium claims but as noted above he had made a uranium claim in an earlier speech on January 26, 2003 at the World Economic Forum.¹¹⁹

According to a presidential commission (the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction), and its *Report to the President of the United States* dated March 31, 2005, Secretary of State Powell during meetings at the CIA to vet his UN speech was informed that there were doubts about the reporting on the Niger uranium matter and he did not include it in his speech for that reason.¹²⁰ However, the INR at Secretary Powell's own State Department earlier in October 2002 and January 2003 had clearly stated that the uranium claim was highly dubious and that the supporting document was probably a hoax and a forgery.¹²¹ Also as mentioned later, Secretary Powell has admitted that he never believed the uranium claim in President Bush's State of the Union Address.¹²² Thus Secretary Powell kept the uranium claim out of his UN speech not just because of what he learned at said CIA meetings but because of what he already knew, which no doubt included the fact that the UN's IAEA had or soon would be getting the documents behind the uranium claim, which the IAEA later declared were forgeries.

Approximately two weeks after the IAEA told the American government on March 3, 2003 that the documents were forgeries, President Bush on March 19, 2003 commenced the war against Iraq.

¹¹⁸ Although, as mentioned earlier, Hadley's op-ed article was published on February 16, 2003. *See supra* note 32. However it is not known when Hadley submitted the article.

¹¹⁹ *Senate Intelligence Committee Report, supra* note 60, at pp. 68, 64.

¹²⁰ Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, *Report to the President of the United States* (2005), p. 213, note 210 [hereinafter *Presidential Commission Report*].*

¹²¹ *Senate Intelligence Committee Report, supra* note 60, at pp. 53-54, 62.

¹²² *See infra* p. 28.

The Senate Report states that on April 5, 2003 the NIC (which had published the NIE) issued a memorandum, *Niger: No Recent Uranium Sales to Iraq*, which stated:

[W]e judge it highly unlikely that [Niger] has sold uranium yellowcake to Baghdad in recent years. The IC [Intelligence Community] agrees with the IAEA assessment that key documents purported showing a recent Iraq-Niger sales accord are a fabrication. We judge that other reports from 2002 – one alleging warehousing of yellowcake for shipment to Iraq, a second alleging a 1999 visit by an Iraqi delegation to [Niger] – do not constitute credible evidence of a recent or impending sale.¹²³

Furthermore, at Libby's trial his lawyers introduced as an exhibit a CIA paper dated April 3, 2003, which stated:

On 24 September 2002, the British Government published a dossier titled "Iraq's Weapons of Mass Destruction," which stated that "there is intelligence that Iraq has sought the supply of significant quantities of uranium from Africa." [When the CIA] ... expressed concerns about the credibility of the reporting to the British ..., the British countered [the] CIA concerns ... by claiming they had corroborating evidence that Iraq sought uranium from Africa. *This alleged corroborating information, however, was not shared with us.*¹²⁴

Also, a memorandum dated June 9, 2003 to Vice President Cheney by a member of his staff and disclosed at Libby's trial reveals:

According to the CIA paper [dated April 3, 2003], the first real indication that the CIA had *serious concerns* about the stream of reporting on [the] Iraq-Niger [uranium deal] does not occur until September 2002 [when the] ... CIA ... "expressed concerns about the credibility of the reporting to the British[?]" ...

[Also on September 24, 2002] a "senior IC [Intelligence Community] official" told the Senate Foreign Relations Committee "that his *analysts rejected the idea that Iraq could obtain uranium from Niger, indicating they had concerns about the reporting.*" On October 4th, CIA officers told the Senate Intelligence Committee that the Iraq-Niger deal was one of two points on which the U.S. differed from the British assessment of Iraq's WMD....

*Nevertheless, the October 1st NIE on Iraq's WMD stated that "Iraq also began vigorously trying to procure uranium ..."*¹²⁵

¹²³ Senate Intelligence Committee Report, *supra* note 60, at pp. 54, 71 (emphasis added).

¹²⁴ Defense Exhibit 64, *Letter and Paper from Stanley M. Moskowitz to Tim Sample* (Apr. 3, 2003), p. 3 (DX64.5, para. #8), United States v. Libby, Cr. No. 05-394 (D.D.C. Jan. 24, 2007) (emphasis added).*

¹²⁵ Government Exhibit 2A, *Memorandum for the Vice President from: John Hannah* (June 9, 2003), p. 1 (001445), United States v. Libby, Cr. No. 05-394 (D.D.C. Feb. 7, 2007) (emphasis added).* The CIA paper dated April 3, 2003 is Defense Exhibit 64, *supra* note 124.

Thus the CIA and a senior Intelligence Community official had serious concerns about the Niger uranium claim in September 2002 prior to the NIE but for some reason those serious concerns were not included in the NIE.¹²⁶ Perhaps Vice President Cheney put as much effort in pushing and protecting the uranium claim in the NIE as he did in later pushing that very claim as a defense against Wilson's accusations.

On July 6, 2003 *The New York Times* published Wilson's op ed article in which he accused the Administration of twisting the intelligence to exaggerate the Iraqi threat and further stated that the United States might have gone to war under false pretenses.¹²⁷

On July 11, 2003 in response to Wilson's public criticism of President Bush's uranium claim in his State of the Union Address the CIA Director Tenet issued a statement (that was mentioned earlier).¹²⁸ Tenet in that statement not only revealed that the CIA had warned the British government against mentioning the uranium claim in its White Paper but Tenet also admitted that CIA officials who reviewed the draft of the State of the Union Address and its

¹²⁶ The Senate Intelligence Committee investigated whether anyone involved in the drafting of the NIE felt any pressure or influence to conform their assessments to Administration policy or to alter their assessments as a result of communications with or visits by Administration officials and Vice President Cheney. *Senate Intelligence Committee Report, supra* note 60, at pp. 272-273, 275. There were complaints. The CIA's Deputy Director for Intelligence stated that "policymakers [kept] coming back to certain points or issues repeatedly, which I think, if an analyst wanted to view that, might be able to say or might think of that as some sort of if not pressure then some sort of a reluctance to accept the answer they were given" but she further stated that such repetition could also have been due to new developments. *Id.* at p. 274. According to a review by the CIA, there were "a lot" of questions on Iraq's WMD capabilities and connections to terrorists, and some "believed extensive questioning was a form of pressure on analysts." *Id.* at p. 275. Despite the complaints, the Committee concluded that it "did not find any evidence that Administration officials attempted to coerce, influence or pressure analysts to change their judgments related to Iraq's weapons of mass destruction capabilities." *Id.* at p. 284 (emphasis added). However, concerning Vice President Cheney the Committee concluded that it "found no evidence that the Vice President's visits to the Central Intelligence Agency were attempts to pressure analysts, were perceived as intended to pressure analysts by those who participated in the briefings on Iraq's weapons of mass destruction programs, or did pressure analysts to change their assessments." *Id.* at p. 285 (emphasis added). Thus although the Committee made the conclusion that other Administration officials did not coerce, influence, or pressure analysts to change their assessments, the Committee made no such conclusion completely exonerating Vice President Cheney. The Committee concluded only that Vice President Cheney's visits did not pressure analysts, and the Committee apparently made no conclusion regarding whether his visits coerced or at least influenced analysts.

¹²⁷ See *supra* p. 10.

¹²⁸ Tenet, *Statement by George J. Tenet, Director of Central Intelligence, supra* note 78.

remarks concerning the Niger-Iraqi uranium deal had “*raised several concerns about the fragmentary nature of the intelligence* with [White House] National Security Council colleagues.”¹²⁹ After noting that the CIA raised said concerns Tenet stated: “Some of the language was *changed*.”¹³⁰ Tenet stated: “From what we know now, Agency officials in the end concurred that the text in the speech was factually correct – i.e. that the British government report said that Iraq sought uranium from Africa.”¹³¹

Also, there is a significant *pre war* intelligence report that was not disclosed in the Senate Report or presidential commission report. An article in *The Washington Post* published April 9, 2006, states that after the Pentagon asked for an authoritative judgment on the Niger uranium claim, the NIC issued a January 2003 memo that stated that the claim that Iraq sought uranium from Niger was baseless and should be laid to rest.¹³² The *Post* article states: “Four U.S. officials with firsthand knowledge said in interviews that the memo, which has not been reported before, arrived at the White House as Bush and his highest-ranking advisers made the uranium story a centerpiece of their case for the rapidly approaching war against Iraq.”¹³³

An article in *The Nation* by Robert Scheer posted April 11, 2006 reveals a startling admission by Powell.¹³⁴ Regarding President Bush’s claim in his State of the Union Address that Iraq had sought uranium, Scheer quotes Powell as telling him: “It should never have been in the speech. I didn’t need Wilson to tell me that there wasn’t a Niger connection. He didn’t tell us anything we didn’t already know. *I never believed it*.”¹³⁵ However as noted above, on January 26, 2003 Powell in a speech stated: “Why is Iraq still trying to procure uranium and the special

¹²⁹ *Id.* at paras. 6, 12 (emphasis added).

¹³⁰ *Id.* at para. 12 (emphasis added).

¹³¹ *Id.*

¹³² Barton Gellman & Dafna Linzer, *A ‘Concerted Effort’ to Discredit Bush Critic*, Wash. Post (Apr. 9, 2006), p. A1, paras. 15-16.*

¹³³ *Id.* at para. 16.

¹³⁴ Robert Scheer, *Now Powell Tells Us*, *The Nation* (Apr. 11, 2006).*

¹³⁵ *Id.* at para. 9 (emphasis added).

equipment needed to transform it into material for nuclear weapons?”¹³⁶ Although Powell in his speech did not mention Niger, he was obviously referring to the earlier and similar claim on his State Department’s website that Iraq’s declaration to the UN “ignores efforts to procure uranium from Niger.”¹³⁷ Thus Powell admitted that he never believed what President Bush said in his State of the Union Address, never believed what was on his State Department’s website, nor apparently believed what was in his own speech wherein he repeated the website’s claim without naming the country.

President Bush was obviously complicit in the changes in his 2003 State of the Union Address since he prepared, reviewed and rewrote the speech. The White House website shows pictures of President Bush preparing his 2003 State of the Union Address and under some of those pictures states: “President George W. Bush *prepares* his State of the Union Address with White House speechwriters”,¹³⁸ “President Bush *reviews* the text” with a speechwriter,¹³⁹ “[s]ketching notes in the margin of speech *drafts*, President Bush *rewrites* portions of the address”,¹⁴⁰ “President Bush *gives his speechwriting team a few points after revising the State of the Union Address*”,¹⁴¹ and “[a]fter days of *revisions* and rehearsals, President Bush reads through his State of the Union speech during a late afternoon practice session.”¹⁴²

National Security Advisor Rice spent a great deal of time helping President Bush prepare his 2003 State of the Union Address. Ron Suskind in his book *The One Percent Doctrine* states:

As a member of the innermost circle, who, in this period, happened to spend more time with George W. Bush than did his wife – *Dr. Rice worked with*

¹³⁶ Powell, *Remarks at the World Economic Forum*, *supra* note 30, at para. 26 (p. 3 if printed).

¹³⁷ *Senate Intelligence Committee Report*, *supra* note 60, at pp. 60-61.

¹³⁸ The White House, *State of the Union: Behind the Scenes* (2003) (wording under picture 1 on top row) (emphasis added).*

¹³⁹ *Id.* (wording under picture 2 on the top row) (emphasis added).

¹⁴⁰ *Id.* (wording under picture 3 on the top row) (emphasis added).

¹⁴¹ *Id.* (wording under picture 4 on the top row) (emphasis added).

¹⁴² *Id.* (wording under picture 4 on the bottom row) (emphasis added).

*the President, hour by hour, preparing [his 2003 State of the Union Address], one of the most important [speeches] he would give in office.*¹⁴³

Suskind also notes that when Tenet expressed his concerns to Hadley about the uranium claim in the Cincinnati speech, Tenet sent a copy of a memo expressing those concerns to Rice (Hadley's boss).¹⁴⁴ The report *Iraq on the Record* reveals that the CIA sent a memo addressed to Rice personally warning against including the uranium claim in a speech by the President.¹⁴⁵

On July 22, 2003, the White House admitted that the CIA sent a second memo dated October 6, 2002 to both Rice and Hadley that described the evidence on the uranium claim as having some weakness.¹⁴⁶ That second CIA memo of October 6, as noted above, actually stated: “[M]ore on why we recommend removing the sentence about procuring uranium oxide from Africa: The evidence is weak [and] we differed with the British.”¹⁴⁷ Thus Rice knew that the CIA believed the uranium claim was weak when she was spending hour after hour helping President Bush prepare his 2003 State of the Union Address.

Iraq did not have any nuclear weapons nor had sought the uranium. The presidential commission report of March 31, 2005 states that the Iraq Survey Group (ISG) conducted extensive investigations in Iraq (after the start of the war in March 2003) and found that during the first Gulf War in 1991 “nearly all of the key nuclear facilities in Iraq ... were bombed and many of the facilities were largely destroyed.”¹⁴⁸ The presidential commission report further states that the ISG “concluded that Iraq had actually ended its nuclear program in 1991.”¹⁴⁹

¹⁴³ Ron Suskind, *The One Percent Doctrine* (New York: Simon & Schuster, 2006), pp. 247-248 (emphasis added).

¹⁴⁴ *Id.* at p. 244.

¹⁴⁵ *Iraq on the Record*, *supra* note 1, at p. 14.

¹⁴⁶ The White House, Press Release, *Press Briefing on Iraq WMD and SOTU Speech* (July 22, 2003), paras. 47-49 (p. 4 if printed).*

¹⁴⁷ *Senate Intelligence Committee Report*, *supra* note 60, at pp. 56-57.

¹⁴⁸ *Presidential Commission Report*, *supra* note 120, at pp. 45, 60.

¹⁴⁹ *Id.* at p. 61.

The ISG mentioned above was created in June 2003 and its report entitled *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD*, dated September 30, 2004, was prepared for the CIA Director.¹⁵⁰ That report states: "Iraq did not possess a nuclear device, nor had it tried to reconstitute a capability to produce nuclear weapons after 1991."¹⁵¹

Since Iraq did not have a nuclear device or a nuclear program after 1991 then it was not surprising that no evidence was found that Iraq had recently sought uranium for a nuclear device as the Bush Administration contended. The presidential commission report states: "The Iraq Survey Group ... found no evidence that Iraq sought uranium from abroad after 1991."¹⁵² The ISG report states: "ISG has not found evidence to show that Iraq sought uranium from abroad after 1991 or renewed indigenous production of such material ..."¹⁵³

The Senate Select Committee on Intelligence released a subsequent report on September 8, 2006 entitled *Report of the Select Committee on Intelligence on Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments*.¹⁵⁴ The Committee in its report discussed among other things the findings mentioned in above ISG report, which was released after the Committee released its earlier

¹⁵⁰ Charles Duelfer, *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD*, vol. 1, Cover, Transmittal Message, Scope Note (2004) [hereinafter *Iraq Survey Group Report*].*

¹⁵¹ *Id.*, vol. 2, Nuclear, at p. 7.

¹⁵² *Presidential Commission Report*, *supra* note 120, at p. 64.

¹⁵³ *Iraq Survey Group Report*, *supra* note 150, vol. 2, Nuclear, at p. 9.

Iraq in the 1970's and early 1980's when it had a nuclear program bought uranium from other countries but reported those purchases in its December 7, 2002 declaration to the UN entitled *Currently Accurate, Full, and Complete Declaration* (CAFCD), and in earlier disclosures. *Iraq Survey Group Report*, *supra* note 150, vol. 2, Nuclear, at pp. 3, 14; *Id.*, vol. 3, Glossary and Acronyms, at p. 2.

Concerning biological weapons (BW), the ISG report states: "ISG judges that in 1991 and 1992, Iraq appears to have destroyed its undeclared stocks of BW weapons and probably destroyed remaining holdings of bulk BW agent." *Id.*, vol. 3, Biological, at p. 2. Concerning chemical weapons (CW), the ISG report states: "While a small number of old, abandoned chemical munitions have been discovered, ISG judges that Iraq unilaterally destroyed its undeclared chemical weapons stockpile in 1991. There are no credible indications that Baghdad resumed production of chemical munitions thereafter ..." *Id.*, vol. 3, Chemical, at p. 1.

¹⁵⁴ Senate Select Committee on Intelligence, 109th Cong., *Report of the Select Committee on Intelligence on Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments* (2006).*

report.¹⁵⁵ Concerning the claim that Iraq had sought uranium for a nuclear weapon, the Committee in its subsequent report also stated that the “CIA’s assessments about the uranium reporting were *inconsistent and contradictory* following publication of the NIE [in October 2002].”¹⁵⁶ The Committee provided a description of the CIA’s inconsistencies and contradictions.¹⁵⁷ President Bush and said officials never disclosed those inconsistencies and contradictions when they made the above public uranium claims.

Thus the above uranium claims that President Bush, National Security Advisor Rice, Secretary Powell, and Secretary Rumsfeld made in January 2003 were false because Iraq and Hussein had made no such attempts or efforts to acquire uranium, and also therefore Iraq and Hussein did not fail to credibly explain said activities nor fail to deal with said activities in Iraq’s declaration to the UN, nor hide said activities from the UN. President Bush’s claim that the British government learned that Iraq had recently sought uranium was also false because the British government did not learn or even allege that such seeking of uranium was recent.

Also, the said uranium claims of President Bush, National Security Advisor Rice, Secretary Powell, and Secretary Rumsfeld were fraudulent, as that term is defined later,¹⁵⁸ because when they made said statements they did not disclose the warnings discrediting the uranium claim that were issued by members of America’s Intelligence Community (IC), including the CIA, INR, and NIC. As noted earlier, those warnings included:

¹⁵⁵ *Id.* at pp. 5, 8, 22, 25.

¹⁵⁶ *Id.* at pp. 12-13 (emphasis added).

¹⁵⁷ *Id.* at pp. 13-17 (emphasis added).

Even the Committee’s description was incomplete. For instance the Committee repeated its earlier assertion that the CIA official who discussed with a NSC official the uranium claim in the State of the Union Address did not raise any concerns about the credibility of the information on the claim but rather expressed concerns about using a source that was classified. *Id.* at 16. However, the Committee again fails to mention the July 11, 2003 public statement of then CIA Director Tenet that the CIA had warned NSC officials about the fragmentary nature of the intelligence on the uranium claim in the speech and the speech was then changed.

Also, the Committee mentions not just CIA reports but also a NIC response. *Id.* at p. 15, including note 30. However, the Committee ignores the above-mentioned January 2003 NIC memo delivered to the White House that stated that the Niger uranium claim was baseless.

¹⁵⁸ *See infra* pp. 65-67.

(1) a CIA analyst's suggestion in September 2002 to a member of the White House's NSC that the White House remove the uranium claim from a proposed speech;¹⁵⁹

(2) the CIA Director's warning in October 2002 to the White House that the reporting on uranium claim in the Cincinnati speech was weak and that President Bush should not make the claim, and the CIA's warnings later that day to National Security Advisor Rice and her deputy Hadley that the evidence on the uranium claim was weak;¹⁶⁰

(3) the State Department INR's dissent in the October 2002 NIE that the claim that Iraq sought uranium from Africa was highly dubious;¹⁶¹

(4) the INR's warnings to the CIA and other members of the Intelligence Community on January 13, 2003 (one week prior to the first of the five said uranium claims) that the document that supported the uranium claim was probably a hoax and a forgery;¹⁶²

(5) the CIA's warning to the White House in January 2003 that it had several concerns about the fragmentary nature of the intelligence on the uranium deal mentioned in a draft of the State of the Union Address;¹⁶³

(6) the NIC's January 2003 memo delivered to the White House at the time that President Bush and his senior advisers were making the uranium story a centerpiece of their case for the rapidly approaching war against Iraq, warning that the Niger uranium story was baseless and should be laid to rest;¹⁶⁴

¹⁵⁹ *Senate Intelligence Committee Report*, *supra* note 60, at p. 51.

¹⁶⁰ *Id.* at pp. 56-57; *Iraq On The Record*, *supra* note 1, at p. 14; The White House, *Press Briefing on Iraq WMD and SOTU Speech*, *supra* note 146, at paras. 47-49 (p. 4 if printed).

¹⁶¹ *Senate Intelligence Committee Report*, *supra* note 60, at pp. 53-54.

¹⁶² *Id.* at p. 62.

¹⁶³ Tenet, *Statement by George J. Tenet, Director of Central Intelligence*, *supra* note 78, at para. 12.

¹⁶⁴ Gellman & Linzer, *A 'Concerted Effort' to Discredit Bush Critic*, *Wash. Post*, *supra* note 132, at paras. 15-16.

(7) the NSC's own belief as expressed in January 2003 to the NIO that the nuclear case against Iraq was weak;¹⁶⁵

(8) the American government's warning in early February 2003 to the UN's IAEA that it could not confirm the uranium reports;¹⁶⁶

(9) the CIA's warning in early February 2003 in meetings with Secretary Powell that there were doubts about the reporting on the Niger uranium deal.¹⁶⁷

Furthermore, Secretary Powell has admitted that he "never believed" the uranium claim in President Bush's State of the Union Address.¹⁶⁸

The statements about the NIE that Vice President Cheney in July 2003 instructed Libby to make to the press, and which Libby did make, to support President Bush's uranium claim were fraudulent statements because said statements did not mention the warnings that discredited the claim in the NIE that Iraq had tried to procure uranium. The warnings included: (1) the NIE also contained the INR's dissent that the uranium claim was highly dubious,¹⁶⁹ (2) the NIC that issued the NIE later issued the above-mentioned January 2003 memo stating that the claim that Iraq sought uranium from Niger was baseless,¹⁷⁰ (3) the NIC later issued the April 5, 2003 memorandum stating that it was highly unlikely that Niger sold uranium to Iraq in recent years,¹⁷¹ and (4) a member of Vice President Cheney's staff had submitted to him a memorandum dated June 9, 2003 that stated that prior to the publication of the NIE the CIA had expressed serious concerns about the credibility of the reporting on the Niger uranium claim.¹⁷²

¹⁶⁵ *Senate Intelligence Committee Report, supra* note 60, at p. 240.

¹⁶⁶ *Id.* at pp. 67-68.

¹⁶⁷ *Presidential Commission Report, supra* note 120, at p. 213, note 210.

¹⁶⁸ Scheer, *Now Powell Tells Us*, *The Nation, supra* note 134, at para. 9.

¹⁶⁹ *Senate Intelligence Committee Report, supra* note 60, at pp. 53-54.

¹⁷⁰ *Id.* at 54; Gellman & Linzer, *A 'Concerted Effort' to Discredit Bush Critic*, *Wash. Post, supra* note 132, at paras. 15-16.

¹⁷¹ *Senate Intelligence Committee Report, supra* note 60, at p. 71.

¹⁷² Government Exhibit 2A, *Memorandum for the Vice President from: John Hannah, supra* note 125, at p. 1

D. The White House Iraq Group (WHIG) and the National Security Council (NSC)

As noted by Bob Woodward in *Plan Of Attack*, then White House Chief of Staff Andrew Card in September 2002 gathered in the White House Situation Room a group of senior White House staffers, a group that became known as the White House Iraq Group (WHIG).¹⁷³ As noted in *The Constitution in Crisis*, WHIG met weekly in the White House Situation Room.¹⁷⁴ WHIG included Card, Rice, Hadley, Libby, and Nicholas Calio who was the director of the White House's congressional relations office.¹⁷⁵ WHIG also included Karl Rove.¹⁷⁶

WHIG's purpose was to persuade the public and Congress of the need to invade Iraq.¹⁷⁷ Referring to WHIG's first meeting, Woodward stated: "Calio [was] ... essentially the president's personal lobbyist on Capitol Hill. The selling of regime change in Iraq was about to begin."¹⁷⁸

According to Woodward, WHIG "coordinat[ed] the daily message on Iraq and the 'echo' – the effort to reinforce the president's themes and arguments with statements and media appearances by administration officials and friendly members of Congress."¹⁷⁹ In January 2003 "Card's White House Iraq Group was planning a big rollout of speeches and documents to counter Saddam and the growing international antiwar movement."¹⁸⁰

(001445).

¹⁷³ Bob Woodward, *Plan of Attack* (New York: Simon & Schuster, 2004), p. 168.

¹⁷⁴ *The Constitution in Crisis*, *supra* note 57, at p. 33 (endnote 184 on page 33 of the said report, provided as support for the above matter, appears to be in error and the correct authority is the authority cited in endnote 185 of said report: Barton Gellman & Walter Pincus, *Depiction of Threat Outgrew Supporting Evidence*, Wash. Post (Aug. 10, 2003), p. A1*).

¹⁷⁵ Woodward, *Plan of Attack*, *supra* note 173, at pp. 168, 137. *See also The Constitution in Crisis*, *supra* note 57, at p. 33 (WHIG included Calio, Rice, Hadley, and Libby) (endnote 184 on page 33 of the said report, provided as support for the above matter, has an apparent error, *see supra* note 174).

¹⁷⁶ *The Constitution in Crisis*, *supra* note 57, at p. 33 (endnote 184 on page 33 of the said report, provided as support for the above matter, has an apparent error, *see supra* note 174).

¹⁷⁷ *The Constitution in Crisis*, *supra* note 57, at p. 33.

¹⁷⁸ Woodward, *Plan of Attack*, *supra* note 173, at p. 168.

¹⁷⁹ *Id.* at p. 172.

¹⁸⁰ *Id.* at p. 286. The month of January 2003 is ascertained from the sequence of events. *Id.* at pp. 285-287.

Not only was Libby a member of WHIG but as mentioned earlier according to Libby's CIA briefer: "*Libby was in charge within the administration (or at least the White House side) for producing papers arguing the case for Iraqi WMD ..., which explains Libby's and the Vice President's interest in the Iraq/Niger/Uranium case.*"¹⁸¹

As noted earlier, President Bush chairs the NSC and the attendees at its meetings include the Vice President, the Secretary of State, the Secretary of Defense, and the National Security Advisor. The White House Chief of Staff was invited to attend any NSC meeting.¹⁸² Thus Rice and Card would attend the meetings of both WHIG and the NSC. The White House website states that the NSC is the "President's principal forum for considering national security and foreign policy matters" and "serves as the President's principal arm for coordinating these policies."¹⁸³ Thus WHIG and the NSC obviously coordinated the five uranium claims that the Administration made in January 2003. Libby and his boss obviously played key roles.

E. Motive to Make False and Fraudulent Statements

President Bush and his senior officials had a motive for making their false and fraudulent uranium claims, which was that they feared losing support for the war and needed a rationale for the war that would scare people and thwart any efforts of Congress to repeal or modify the earlier war resolution.

Under the Constitution, it is the Congress that has the power to "declare War."¹⁸⁴ Under the War Powers Resolution of 1973, President Bush could not use military force in Iraq for more than ninety days without a Congressional declaration of war or a specific Congressional

¹⁸¹ Defense Exhibit 421, *Message by Craig Schmall*, *supra* note 34, at p. 2 (DX421.2) (emphasis added).

¹⁸² The White House, *National Security Council*, *supra* note 114, at para. 2.

¹⁸³ *Id.* at para. 3.

¹⁸⁴ U.S. Const. art. I, § 8.

(statutory) authorization.¹⁸⁵ Also, under the War Powers Resolution any time American troops are engaged in hostilities outside the United States without a declaration of war or a specific statutory authorization, “such forces shall be removed by the President if the Congress so directs by concurrent resolution.”¹⁸⁶ The October 2002 resolution authorizing the use of military force in Iraq did not supersede the earlier War Powers Resolution of 1973.¹⁸⁷ Thus Congress could not only repeal the October 2002 resolution prior to the start of the war but also could repeal it and order President Bush to remove the troops after he started the war.

The resolution that Congress passed in October 2002 gave President Bush much discretion as to when to start the war against Iraq. The war resolution stated:

The President is authorized to use the Armed Forces of the United States *as he determines to be necessary and appropriate* in order to – (1) defend the national security of the United States against the continuing threat posed by Iraq; and (2) enforce all relevant United Nations Security Council resolutions regarding Iraq.¹⁸⁸

The above two grounds for the war were closely related to the earlier portions of the resolution that stated that international weapons inspectors had left Iraq in 1998 because Iraq had thwarted their efforts, and that it was the belief of Congress that Iraq was “actively seeking a nuclear weapons capability.”¹⁸⁹

The war resolution had not been unanimous, the vote in the House had been 296 to 133, and the vote in the Senate had been 77 to 23, and the resolution had some strings attached. The resolution stated that the “President shall, at least once every 60 days, submit to the Congress a report on matters relevant to this joint resolution.”¹⁹⁰

¹⁸⁵ 50 U.S.C. § 1544(b).

¹⁸⁶ 50 U.S.C. § 1544(c).

¹⁸⁷ Iraq War Res. of 2002, Pub. L. No. 107-243, § 3(c)(2), 116 Stat. 1501.

¹⁸⁸ *Id.*, Pub. L. No. 107-243, § 3(a)(1)-(2), 116 Stat. 1501 (emphasis added).

¹⁸⁹ *Id.*, Pub. L. No. 107-243, introduction, paras. 4, 6, 116 Stat. 1498.

Congress acquired this belief that Iraq was seeking a nuclear weapons capability no doubt because of the Bush Administration’s misleading statements on the matter. *See Iraq on the Record, supra* note 1, at pp. 7-8, 13.

¹⁹⁰ Iraq War Res. of 2002, Pub. L. No. 107-243, § 4(a), 116 Stat. 1501.

President Bush and said officials obtained the Congressional resolution for the war in October 2002, but they did not start the war until five months later in March 2003. During that five months the Administration needed to continue to provide to Congress information that persuaded Congress that Iraq was a continuing threat to the security of the United States and was not complying with UN resolutions, or else Congress might withdraw the resolution or at least modify it so that President Bush could not initiate the war at his own discretion.

After Congress passed the war resolution, the UN Security Council on November 8, 2002 passed Resolution 1441 (S.C. Res. 1441) that demanded that Iraq provide to the UN Security Council and other UN entities, including the IAEA, a “currently accurate, full, and complete declaration of all aspects of its programmes to develop chemical, biological, and nuclear weapons” including the “precise locations of such weapons ... and related material.”¹⁹¹

That resolution also set forth an enhanced weapons inspections regimen in Iraq that gave UN inspectors unrestricted access to any sites and buildings as well as the right to “remove, destroy, or render harmless all ... [such] weapons, ... materials, and other related items.”¹⁹²

The resolution required Iraq to cooperate fully in the implementation of the resolution.¹⁹³ The resolution stated that Iraq faced “serious consequences” for violations of its obligations.¹⁹⁴

Iraq then agreed to the resolution,¹⁹⁵ and on November 27, 2002 Iraq allowed UN weapons inspectors to reenter Iraq.¹⁹⁶ On December 7 Iraq provided a declaration to the UN in response to S.C. Res. 1441.¹⁹⁷

¹⁹¹ Security Council Resolution 1441 (S.C. Res. 1441)(Nov. 8, 2002), p. 3 (para. #3).*

¹⁹² *Id.* at p. 4 (para. #7).

¹⁹³ *Id.* at p. 3 (para. #4).

¹⁹⁴ *Id.* at p. 5 (para. #13).

¹⁹⁵ UN News Centre, Press Release, *Iraq, in Letter to UN, Accepts New Security Council Resolution on Weapons Inspections* (Nov. 13, 2002).*

¹⁹⁶ UN News Centre, Press Release, *Resuming Weapons Inspections in Iraq, UN Teams Visit 3 Sites Outside Baghdad* (Nov. 27, 2002).*

¹⁹⁷ UN News Centre, Press Release, *Iraq Hands over Declaration to UN* (Dec. 7, 2002).* Iraq declared

According to Woodward in *Plan Of Attack*, in the first week of January 2003 President Bush had a discussion with then National Security Advisor Rice about the UN weapons inspections in Iraq.¹⁹⁸ According to Woodward the press reports of Iraqis leading UN inspectors around and opening up buildings with nothing inside “infuriated” President Bush who believed in Woodward’s words that the “unanimous international consensus of the November [UN] resolution was beginning to fray.”¹⁹⁹ President Bush told Rice that the “pressure isn’t holding together” and he commented about the antiwar protests in the United States and Europe.²⁰⁰

In response to the fact that Iraq had allowed UN weapons inspectors to reenter Iraq, Congresswoman Sheila Jackson Lee and four other Members of Congress on January 7, 2003 submitted House Concurrent Resolution 2, which expressed the sense of Congress that Congress should repeal the war resolution in order to allow more time for the UN weapons inspections.²⁰¹ The new resolution contended that the threat posed by Iraq had lessened because after the war resolution was passed Iraq then “allowed international weapons inspectors to re-enter Iraq in order to identify and destroy Iraq’s weapons of mass destruction stockpiles and development capabilities.”²⁰² The new resolution stated “Congress should reexamine the threat posed by Iraq, including by allowing time to review fully and accurately the findings of the international weapons inspectors.”²⁰³

The Bush White House would certainly have learned about the new resolution since the White House had a congressional relations office that its director Calio ran like an intelligence agency with twenty-five people who monitored everything in Congress including closed-door

uranium purchases that it had made in the 1970’s and early 1980’s. *See supra* note 153.

¹⁹⁸ Woodward, *Plan of Attack*, *supra* note 173, at p. 253.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ H. Con. Res. 2, 108th Cong. (2003).*

²⁰² *Id.* at para. 3.

²⁰³ *Id.* at para. 5.

briefings.²⁰⁴ As mentioned earlier, Calio was President Bush's personal lobbyist to Congress and was also a member of WHIG.²⁰⁵

On January 24, 2003, one hundred and thirty Members of Congress sent a letter to President Bush that referred to the report of UN weapons inspectors that was to be released in a few days on January 27 and they encouraged President Bush to "sufficiently weigh future decisions regarding Iraq" in light of that UN report.²⁰⁶ The Members of Congress encouraged President Bush to consider any UN requests for "additional inspection time" and they stated that the "U.S. should make every attempt to achieve Iraq's disarmament through diplomatic means ... in accordance with the process articulated in UN Security Council resolution 1441."²⁰⁷

On January 27, 2003, which was the day before President Bush gave his State of the Union Address to Congress and claimed that Iraq had recently sought uranium from Africa, the UN in a press release regarding Iraq's response to S.C. Res. 1441 stated that "it would appear that Iraq had decided in principle to provide cooperation on substance in order to complete the disarmament task through inspection."²⁰⁸ Although there were some questions concerning chemical and biological weapons,²⁰⁹ the press release stated that Mohamed ElBaradei, the head of the UN's International Atomic Energy Agency (IAEA) that conducted the nuclear weapons inspections, reported that after 60 days of inspections with a total of 139 inspections at 106 locations the IAEA had found "no evidence that Iraq had revived its nuclear weapons programme" and "no prohibited nuclear activities had been identified."²¹⁰ The press release

²⁰⁴ Woodward, *Plan of Attack*, *supra* note 173, at pp. 137, 168, 171.

²⁰⁵ *Id.* at p. 168; *The Constitution in Crisis*, *supra* note 57, at p. 33 (*see also supra*, note 175).

²⁰⁶ Letter from 130 Members of Congress to President George W. Bush (Jan. 24, 2003), para. 3.*

²⁰⁷ *Id.* at paras. 3, 1.

²⁰⁸ Security Council, Press Release, *Security Council Briefed by Chief UN Weapons Experts on First 60 Days of Inspections in Iraq* (Jan. 27, 2003), para. 2.*

²⁰⁹ *Id.* at paras. 3-4.

²¹⁰ *Id.* at paras. 6-7. For ElBaradei's above statements in his actual report to the Security Council, *see* International Atomic Energy Agency (IAEA), *The Status of Nuclear Inspections in Iraq* (Jan. 27, 2003), paras. 27,

stated that the inspectors had investigated the claim that Iraq had sought to import uranium and the Iraqis denied the claim but the inspectors would continue to pursue the matter.²¹¹

The UN press release concluded with the statement of ElBaradei:

With our verification system now in place, barring exceptional circumstances, and provided there is sustained proactive cooperation by Iraq, *we should be able, within the next few months, to provide credible assurance that Iraq has no nuclear weapons programme. These few months would be a valuable investment in peace because they could help us avoid a war.*²¹²

Thus during the ten day period of January 20 to 29, 2003 when President Bush submitted the above reports to Congress and his said senior officials made their speeches and statements about the uranium, they were facing and perhaps even infuriated by Iraq's cooperation with S.C. Res. 1441. Also, the UN weapons inspectors had reentered Iraq on November 27, 2002 but after approximately two months of inspections they had not found any weapons of mass destruction. It should again be noted that according to Woodward in January 2003 "Card's White House Iraq Group was planning a big rollout of speeches and documents to counter Saddam and the growing international antiwar movement."²¹³

Also, at the time that President Bush and his said senior officials made their five uranium claims between January 20 and 29 there was pending the Congressional resolution of January 7 that sought to delay the start of the war basically because the grounds for the war had been placated. As mentioned earlier, the war resolution stated that weapons inspectors had left Iraq in 1998 because Iraq had thwarted their efforts.²¹⁴ The war resolution authorized President Bush to

14 (pp. 4, 2-3 if printed).*

²¹¹ Security Council, *Security Council Briefed by Chief UN Weapons Experts on First 60 Days of Inspections in Iraq*, *supra* note 208, at para. 43 (p. 7 if printed); *see also* IAEA, *The Status of Nuclear Inspections in Iraq*, *supra* note 210, at para. 17 (p. 3 if printed) (containing ElBaradei's statements regarding uranium).

²¹² Security Council, *Security Council Briefed by Chief UN Weapons Experts on First 60 Days of Inspections in Iraq*, *supra* note 208, at para. 48 (p. 7 if printed) (emphasis added); *see also* IAEA, *The Status of Nuclear Inspections in Iraq*, *supra* note 210, at para. 27 (p. 4 if printed) (containing ElBaradei's statement).

²¹³ Woodward, *Plan of Attack*, *supra* note 173, at p. 286.

²¹⁴ Iraq War Res. of 2002, Pub. L. No. 107-243, introduction, para. 4, 116 Stat. 1498.

use military force in order to (1) defend the national security against the continuing threat posed by Iraq and (2) enforce UN Security Council resolutions.²¹⁵ However, as noted in the January 7 resolution Iraq had recently allowed the reentry of weapons inspectors who could destroy any weapons of mass destruction.²¹⁶ Thus it certainly appeared that Iraq did not present a threat to the security of the United States and also was cooperating with UN Security Council resolutions. Therefore the grounds for the war resolution had been placated and there was no longer a need for a war resolution that gave President Bush total discretion as to when to start a war against Iraq. The January 7 resolution stated that Congress should reexamine the threat posed by Iraq, including allowing more time to fully review the findings of the weapons inspectors.²¹⁷

Furthermore, when President Bush submitted his State of the Union Address to Congress on January 28, 2003 in which he claimed that Iraq had recently sought significant quantities of uranium from Africa, he was obviously aware of the fact that the UN had issued a press release the previous day stating that Iraq was cooperating with S.C. Res. 1441 and that after sixty days of inspections the UN weapons inspectors had found no evidence that Iraq had revived its nuclear weapons program. The information in the UN press release similarly negated the grounds for the war set forth in the Congressional war resolution.

Also at the time of his State of the Union Address, President Bush was obviously aware of the letter that 130 Members of Congress had sent to him on January 24 encouraging him to sufficiently weigh the report of the UN weapons inspectors and to allow any requested additional inspection time. The Members of Congress encouraged President Bush to achieve Iraq's disarmament through diplomatic means in accordance with S.C. Res. 1441.

²¹⁵ *Id.*, Pub. L. No. 107-243, § 3(a), 116 Stat. 1501.

²¹⁶ H. Con. Res. 2 (2003), *supra* note 201, at para. 3.

²¹⁷ *Id.* at para. 5.

The speeches containing the uranium claims actually directly or indirectly acknowledged the movement for more time for inspections, and those speeches sought to stop that movement. President Bush's statements in his State of the Union report that Iraq had an advanced nuclear weapons program in the past and that the British government had learned that Iraq had recently sought significant quantities of uranium from Africa, were statements aimed at those who believed Iraq was not an imminent threat. In his State of the Union report President Bush stated:

Some have said we must not act until the threat is imminent. Since when have terrorists and tyrants announced their intentions, politely putting us on notice before they strike? If this threat is permitted to fully and suddenly emerge, all actions, all words, and all recriminations would come too late. Trusting in the sanity and restraint of Saddam Hussein is not a strategy, and it is not an option.

*This dictator ... is assembling the world's most dangerous weapons ... [and] has already used them on whole villages*²¹⁸

President Bush's statement about those who believed that there was no imminent threat was an obvious reference in part to ElBaradei who the day before issued his public report that stated that the UN had found no evidence that Iraq had a nuclear weapons program and therefore a few more months of inspections should be allowed in order to avoid a war.²¹⁹ President Bush's statement about those who believed there was no imminent threat was also aimed at any Member of Congress thinking of voting for House Concurrent Resolution 2 filed January 7 (that expressed the sense of Congress that the war resolution should be repealed and that stated that Congress should reexamine the threat posed by Iraq, including allowing time to review fully the findings of the UN weapons inspectors²²⁰), or thinking of voting for any similar resolution.

Secretary Powell in his speech, which in part referred to Iraq's December 7 disclosure to the UN, stated:

²¹⁸ Bush, *State of the Union Report*, *supra* note 25, at p. 9 (emphasis added).

²¹⁹ Security Council, *Security Council Briefed by Chief UN Weapons Experts on First 60 Days of Inspections in Iraq*, *supra* note 208, at paras. 6-7, 48 (pp. 1-2, 7 if printed).

²²⁰ See H. Con. Res. 2 (2003), *supra* note 201, at para. 5.

Where are the mobile vans that are nothing more than biological weapons laboratories on wheels? *Why is Iraq still trying to procure uranium and the special equipment needed to transform it into material for nuclear weapons?*

These questions are not academic. They are not trivial. They are questions of life and death, and they must be answered.

To those who say, "Why not give the inspection process more time?", I ask: "How much more time does Iraq need to answer those questions?["] It is not a matter of time alone, it is a matter of telling the truth, and so far Saddam Hussein still responds with evasions and lies.

Saddam should tell the truth, and tell the truth now. *The more we wait, the more chance there is for this dictator with clear ties to terrorist groups, including al-Qaida, more time for him to pass a weapon, share a technology, or use these weapons again.*²²¹

Powell obviously knew that ElBaradei was one of those asking for more time for weapons inspections since Powell mentioned in his speech that ElBaradei would be issuing his report the next day,²²² and in that report ElBaradei asked for a few more months to finish the inspections because those few months could avoid a war.²²³

Secretary Rumsfeld at his press conference stated:

[Hussein's] regime has the design for a nuclear weapon; it was working on several different methods of enriching uranium, and *recently was discovered seeking significant quantities of uranium from Africa....*

*For those who counsel more time for inspections, the President responded that we have given Saddam Hussein more than a decade to give up chemical, biological and his nuclear weapon program. Yet nothing to date has restrained him...*²²⁴

Secretary Rice in her op-ed article stated:

Iraq has filed a false declaration to the United Nations that amounts to a 12,200-page lie.

For example, the declaration fails to account for or explain *Iraq's efforts to get uranium from abroad*, its manufacture of specific fuel for ballistic missiles it claims not to have

....

²²¹ Powell, *Remarks at the World Economic Forum*, *supra* note 30, at paras. 26-29 (p. 3 if printed) (emphasis added).

²²² *Id.* at para. 31 (p. 4 if printed).

²²³ Security Council, *Security Council Briefed by Chief UN Weapons Experts on First 60 Days of Inspections in Iraq*, *supra* note 208, at para. 48 (p. 7 if printed).

²²⁴ Rumsfeld, *DoD News Briefing – Secretary Rumsfeld and Gen. Myers*, *supra* note 31, p. 1 (emphasis added).

Given the duplicitous record of the regime, its recent promises to do better can only be seen as an *attempt to stall for more time*.²²⁵

Thus the above speeches and report not only made the uranium claim but aimed it at those who would contend that Iraq was not an imminent threat or would contend that more time should be allowed for inspections, as mentioned in other parts of the speech or report. Obviously the Administration was more concerned about Members of Congress raising such issues rather than anyone else since only Members of Congress could take away President Bush's power to start the war by repealing the war resolution or modifying it to allow for more inspection time.

Although they were the key members of the NSC that believed that the nuclear case against Iraq was weak, President Bush and his said senior officials twisted the unconfirmed and untrue uranium reports into unquestioned evidence that would scare Members of Congress into believing that the war resolution was still needed because Iraq did have nuclear weapons and thus was a threat to national security, and Iraq was also not complying with UN resolutions that required it to disclose its nuclear weapons. According to President Bush and his senior officials they might not have found a smoking gun but they found what Iraq did not disclose to the UN which was evidence that Iraq recently sought the fuel that could without further delay ignite a nuclear weapon that would produce a mushroom cloud over America.

Obviously when President Bush and said officials made their uranium claims in January 2003 they feared that current or further UN reports that stated that Iraq had no weapons of mass destruction would strengthen the Congressional movement to delay the start of the war to allow more time for weapons inspections. President Bush and said officials obviously feared that even Members of Congress who had voted for the war resolution might contend that in light of such reports the resolution that they had voted for had been successful and had served the purpose of

²²⁵ Rice, *Why We Know Iraq Is Lying*, *supra* note 29, at paras. 5-6, 9 (emphasis added).

forcing Hussein to allow weapons inspections, which fortunately revealed that Iraq had no weapons of mass destruction and thus was not a threat to our national security. Thus the purpose of the uranium claims was to create the fear of something that did threaten our national security but which also would be hard to find. Therefore UN reports about not finding it would not be that significant to Congress.

However, President Bush and said officials suddenly stopped publicly putting their own names behind the uranium claims when the claims became too risky to use after the Administration, in response to obvious pressure from the IAEA, gave the IAEA the forged documents in support of the uranium claim. The Administration's public statements that Iraq has sought uranium for a nuclear weapon no doubt caused the IAEA to realize that it was a critical part of its weapons inspection process to obtain the documents that supported the claim that Iraq had sought uranium for a nuclear weapon. On February 4, 2003, which was a few days after President Bush's State of the Union Address of January 28, 2003, the United States government turned over the documents in support of the uranium claim to the IAEA and told the IAEA that it could not confirm the uranium reports.²²⁶ President Bush and said officials had stopped making the uranium claim in public a few days earlier on January 29, and more specifically Secretary Powell did not make the uranium claim in his UN speech of February 5, 2003.²²⁷

As expected, due to the January 27, 2003 UN report that revealed that inspectors had not found any weapons of mass destruction or evidence that Iraq had revived its nuclear weapons program, the Congressional movement to delay the war did continue to gain momentum but was obviously restrained by the Administration's prior claims that Iraq was hiding from the UN weapons inspectors the fact that it had sought uranium for a nuclear weapon.

²²⁶ See *Senate Intelligence Committee Report, supra*, note 60, at 67-68.

²²⁷ See *supra* pp. 6-8, 24-25. Secretary Rumsfeld made the last of the five uranium claims on January 29, 2003, which was the day after the State of the Union Address. See *supra* pp. 6-8.

Two days after the UN report, Senator Robert Byrd and six other Senators submitted on January 29, 2003 Senate Resolution 28, which expressed the sense of the Senate that UN weapons inspectors should be given sufficient time to carry out their inspections.²²⁸ The resolution noted that ElBaradei in his report of January 27, 2003 had stated that the IAEA had found no evidence that Iraq had revived its nuclear weapons program and ElBaradei had further stated that the inspection process should be allowed to continue for a few more months.²²⁹ The resolution noted that key members of the UN Security Council had “expressed their belief that the weapons inspectors need more time to continue their work and have urged the United States not to rush to a decision to invade Iraq without seeking the support of the Security Council.”²³⁰ The resolution also stated that before initiating any offensive military operation against Iraq the United States should seek from the UN Security Council a specific authorization for the use of such force.²³¹

Also on January 29, 2003, Senator Edward Kennedy submitted Senate Resolution 32 that expressed the sense of the Senate that before President Bush used military force against Iraq he should provide full support to the UN weapons inspectors to facilitate their ongoing disarmament work, and also he should obtain approval from Congress in the form of new legislation authorizing the use of military force against Iraq.²³² The resolution noted that the circumstances had significantly changed since October 2002 when Congress authorized the use of military force against Iraq, and specifically noted the January 27, 2003 report of the UN weapons inspectors.²³³

²²⁸ S. Res. 28, 108th Cong. (2003), para. 21 (#1).*

²²⁹ *Id.* at paras. 8, 9.

²³⁰ *Id.* at para. 14.

²³¹ *Id.* at para. 21 (# 4).

²³² S. Res. 32, 108th Cong. (2003), para. 7 (#1, #2).*

²³³ *Id.* at paras. 2, 4

On February 5, 2003 Congressman Alcee Hastings submitted House Resolution 55 that was similar to Senate Resolution 28 and which expressed the sense of the House of Representatives that UN weapons inspectors should be given sufficient time to carry out their inspections, which noted ElBaradei's January 27, 2003 report that the IAEA had found no evidence that Iraq had revived its nuclear weapons program, and which noted ElBaradei's request for a few more months to finish the weapons inspections.²³⁴ The resolution similarly noted that key members of the UN Security Council had expressed their beliefs that the UN weapons inspectors should allowed more time to finish their inspections and that the United States should not invade Iraq without seeking the support of the Security Council.²³⁵ The resolution also stated that before using any military force against Iraq the United States should seek from the UN Security Council a specific authorization for the use of such force.²³⁶

On February 5, 2003, Congressman Peter DeFazio and twenty-nine other Members of Congress submitted another resolution, House Joint Resolution 20, to actually repeal the war resolution.²³⁷

On February 14, 2003 the UN issued another press release stating that Iraq's cooperation with UN weapons inspectors "continued to improve" and that while many banned weapons still remained unaccounted for, the UN inspectors "to date ... had *found no weapons of mass destruction.*"²³⁸ The press release specifically stated that the IAEA's nuclear weapons inspectors had conducted a total of 177 inspections at 125 locations and "[t]o date ... had found no evidence of ongoing prohibited nuclear or nuclear-related activities in Iraq."²³⁹

²³⁴ H. Res. 55, 108th Cong. (2003), paras. 20 (#1), 8, 9.*

²³⁵ *Id.* at para. 13.

²³⁶ *Id.* at para. 20 (# 4).

²³⁷ H. J. Res. 20, 108th Cong. (2003).*

²³⁸ Security Council, Press Release, *Iraq Cooperating with Disarmament Procedures, But Many Banned Weapons Remain Unaccounted for, Inspectors Tell Security Council* (Feb. 14, 2003), para. 1 (emphasis added).*

²³⁹ *Id.* at paras. 46, 59 (pp. 7, 8 if printed).

The press release noted that ElBaradei had recently received additional information on the claim that Iraq had sought uranium and he was still looking into the issue.²⁴⁰

On March 7, 2003 the United States, the United Kingdom, and Spain submitted a draft resolution to the Security Council that basically stated that Iraq had violated Security Council Resolution 1441 because its December 7 declaration contained false statements, and it had not cooperated fully in the implementation of that resolution (which required Iraq to cooperate with UN weapons inspectors).²⁴¹ The draft resolution also stated that the Security Council “[r]ecogniz[es] the threat Iraq’s noncompliance with Council resolutions and proliferation of weapons of mass destruction ... poses to international peace and security.”²⁴² The draft resolution stated that “Iraq will have failed to take the *final opportunity* afforded by” Security Council 1441 to disarm unless by March 17 (ten days later) Iraq persuaded the Security Council to conclude that it had fully cooperated in the disarmament obligations under Resolution 1441 and was yielding to UN weapons inspectors “all weapons, weapon delivery and support systems and structures” required under Security Council resolutions.²⁴³ Since it would have been highly unlikely that the Security Council would affirmatively conclude within ten days that Iraq had fully cooperated with Resolution 1441 (which could only be concluded after the weapons inspectors finished their independent inspections), then the draft resolution if passed would have been as a practical matter the UN’s declaration of war against Iraq.

The press release mentioned that UN inspectors had begun destroying 50 litres of mustard gas declared by Iraq. *Id.* at para. 22 (p. 3 if printed). Thus the UN did not consider the mustard gas to be a weapon of mass destruction or else the UN would not have stated that the weapons inspectors had found no weapons of mass destruction. *See Id.* at para. 1.

²⁴⁰ *Id.* at para. 50 (p. 7 if printed). Obviously the reference to additional information was to the uranium documents that the United States government gave to the IAEA ten days earlier on February 4, 2003. *See Senate Intelligence Committee Report, supra* note 60, at p. 67.

²⁴¹ Draft Security Council Resolution 215 (Mar. 7, 2003), p. 1.*

²⁴² *Id.*

²⁴³ *Id.* at p. 2 (emphasis added).

However, also on March 7, 2003 ElBaradei publicly informed the UN Security Council: “After three months of intrusive inspections, we have to date found no evidence or plausible indication of the revival of a nuclear weapons programme in Iraq.”²⁴⁴

ElBaradei also publicly informed the Security Council that the documents that supposedly supported the uranium claims were “*not authentic*” and therefore the IAEA concluded that the allegations that Iraq attempted to buy uranium from Niger in recent years were “*unfounded*.”²⁴⁵

On March 7, after hearing reports on the weapons inspections, several UN Security Council members called for the continuation of weapons inspections and stated that there was no need at the time for additional resolutions that declared that Iraq had failed to take the final opportunity to disarm.²⁴⁶

The next day an article in *The New York Times* about ElBaradei’s report to the UN stated:

[T]he chief United Nations weapons inspectors bluntly if quietly contradicted some American and British assertions about Iraqi violations....

Mohamed ElBaradei, chief of the International Atomic Energy Agency, said that a report – which had earlier been identified as coming from British intelligence – that *Iraq had tried to purchase uranium from Niger was based on fake documents*.

....

In addition to casting severe doubt on the reported Iraqi attempt to buy uranium in Niger, Dr. ElBaradei said that “there is no indication that Iraq has attempted to import aluminum tubes for use in centrifuge enrichment” of uranium into weapons-grade material.²⁴⁷

²⁴⁴ UN News Centre, Press Release, *IAEA Sees Progress in Identifying Iraq’s Nuclear Capabilities, Security Council Told*, (Mar. 7, 2003), para. 2 (emphasis added);* International Atomic Energy Agency (IAEA), *The Status of Nuclear Inspections in Iraq: An Update* (Mar. 7, 2003), p. 6.* There were still unresolved issues concerning biological and chemical weapons. See UN News Centre, Press Release, *Blix Welcomes Accelerated Cooperation by Iraq, But Says Unresolved Issues Remain* (Mar. 7, 2003).*

²⁴⁵ See UN News Centre, Press Release, *IAEA Sees Progress in Identifying Iraq’s Nuclear Capabilities, Security Council Told*, *supra* note 244, at para. 7 (emphasis added); IAEA, *The Status of Nuclear Inspections in Iraq: An Update*, *supra* note 244, at p. 4 (emphasis added).

²⁴⁶ UN News Centre, Press Release, *Several Security Council Members Call for More Inspections in Iraq* (Mar. 7, 2003).*

²⁴⁷ Felicity Barringer, *Threats and Responses: United Nations; U.N. Split Widens as Allies Dismiss Deadline on Iraq*, *New York Times* (Mar. 8, 2003), paras. 2, 3, 9 (emphasis added).*

The headline on the story in the *Washington Post* on March 8 stated: “*Some Evidence on Iraq Called Fake, U.N. Nuclear Inspector Says Documents on Purchases Were Forged*”.²⁴⁸

On March 11, 2003, UN Secretary General Kofi Annan stated that if the United States failed to gain approval from the Security Council for an attack on Iraq, the United States decision to act alone would violate the UN charter.²⁴⁹

On March 11-12, 2003, the Security Council held hearings for countries that were not members of the Security Council and at those hearings various countries called for the continuation of weapons inspections rather than commencing a war to disarm Iraq.²⁵⁰

After the news about ElBaradei’s report that the documents in support of the Administration’s uranium claim were forged, the Administration faced even more difficulty in stalling the Congressional movement to delay the war and the Administration needed to act quickly to start the war or else risk losing the Congressional authorization for it.

Obviously due to ElBaradei’s report that the uranium documents were fake and that the weapons inspectors had found no evidence that Iraq had revived its nuclear weapons program (and thus clearly implying that Iraq was not an imminent threat to any nation), Congresswoman Barbara Lee and fifteen other Members of Congress on March 12, 2003 submitted House Resolution 141, which indirectly condemned any military action against Iraq because Iraq had not attacked the United States and was not an imminent threat.²⁵¹ The resolution noted that President Bush had “declared in a variety of documents and fora that the United States has the

²⁴⁸ Joby Warrick, *Some Evidence on Iraq Called Fake, U.N. Nuclear Inspector Says Documents on Purchases Were Forged*, Wash. Post (Mar. 8, 2003).*

²⁴⁹ Patrick E. Tyler and Felicity Barringer, *Threats and Responses: United Nations; Annan Says U.S. Will Violate Charter if It Acts Without Approval*, New York Times (Mar. 11, 2003), paras 1-2.*

²⁵⁰ See UN News Centre, Press Release, *Security Council Begins Hearing from over 40 Non-Members on Disarming Iraq* (Mar. 11, 2003);* UN News Centre, Press Release, *Security Council Hears Call for More Time for Iraq Weapons Inspections* (Mar. 12, 2003).*

²⁵¹ H. Res. 141, 108th Cong. (2003).*

right to unilaterally exercise military action, including preemptive nuclear strikes, against nations that have not attacked the United States, creating what has been termed the ‘doctrine of preemption’”.²⁵² The resolution stated:

[T]he doctrine of preemption contemplates *initiating warfare against a nation that might not pose an imminent threat of harm to the United States* and far exceeds the commonly understood view, set out in the Charter of the United Nations and recognized in international and United States law, that nations enjoy the right of self defense, and that *such self-defense might include undertaking military action to prevent an imminent attack ...*²⁵³

The resolution stated that the “doctrine of preemption represents a radical departure from the official position of the United States since the adoption of the Charter of the United Nations.”²⁵⁴ The resolution concluded:

(1) it is the sense of the House of Representatives that the United States possesses the inherent right to defend itself against imminent or actual attack, as codified in the Charter of the United Nations and embodied in the traditions of international law, *but that right does not extend to undertaking military action in the absence of such an imminent or actual attack*; and

(2) the House of Representatives disavows the doctrine of preemption because it poses a threat to international law and to the national security interests of the United States.²⁵⁵

Congressman Henry Waxman reacted to the news about ElBaradei’s report by sending President Bush a letter dated March 17, 2003 in which he informed President Bush that he had voted for the war resolution but that in the “last ten days ... it has become incontrovertibly clear that a key piece of evidence you and other Administration officials have cited regarding Iraq’s efforts to obtain a nuclear weapon is a hoax.”²⁵⁶ Waxman quoted from ElBaradei’s report that the documents in support of the uranium claim were “not authentic.”²⁵⁷ Waxman noted the

²⁵² *Id.* at para. 1.

²⁵³ *Id.* at para. 2 (emphasis added).

²⁵⁴ *Id.* at para. 3.

²⁵⁵ *Id.* at para. 10 (emphasis added).

²⁵⁶ Letter from Congressman Henry A. Waxman to The President (George W. Bush) (Mar. 17, 2003), p. 1*

²⁵⁷ *Id.* at p. 4.

above article in the *Washington Post* entitled *Some Evidence on Iraq Called Fake, U.N. Nuclear Inspector Says Documents on Purchases Were Forged*.²⁵⁸ Waxman stated that other recent press reports revealed that American intelligence officials had doubts about the veracity of the evidence on the uranium claim long before ElBaradei's report.²⁵⁹ Waxman stated:

It appears that at the same time that you ... [and other Administration officials] were citing Iraq's efforts to obtain uranium from Africa as a crucial part of the case against Iraq, U.S. intelligence officials regarded this very same evidence as unreliable. If true, this is deeply disturbing: it would mean that your Administration asked the U.N. Security Council, the Congress, and the American people to rely on information that your own experts knew was not credible.²⁶⁰

Congressman Waxman called on President Bush to provide Congress with a full accounting of the matter and more specifically to address whether the CIA reviewed his State of the Union Address and if so what did the CIA say about the uranium claim.²⁶¹ Waxman asked President Bush for an expeditious response due to the "urgency of the situation", obviously referring to the beginning of his letter where he noted that "[u]pon your order, our armed forces will soon initiate the first preemptive war in our nation's history."²⁶²

On March 17, 2003 the United States, the United Kingdom, and Spain announced that they would not seek a vote on their proposed resolution that would have authorized a war against Iraq but they also stated that they might take their own steps to secure Iraq's disarmament.²⁶³ The French Ambassador, who was against the draft resolution, stated that the cosponsors realized that the majority of the Security Council was against the draft resolution because it authorized the use of force while the inspections set up by Resolution 1441 were producing results.²⁶⁴

²⁵⁸ *Id.* (including note 8).

²⁵⁹ *Id.* at p. 5.

²⁶⁰ *Id.* at pp. 5-6.

²⁶¹ *Id.* at p. 7.

²⁶² *Id.* at pp. 7, 1.

²⁶³ UN News Centre, Press Release, *UK, US and Spain Won't Seek Vote on Draft Resolution, May Take 'Own Steps' to Disarm Iraq* (Mar. 17, 2003).*

²⁶⁴ *Id.* at para. 11 (p. 2 if printed).

On March 18, 2003, an article in the *Washington Post*, with the headline *Bush Clings to Dubious Allegations About Iraq*, stated:

As the Bush administration prepares to attack Iraq this week, it is doing so on the basis of a number of allegations against Iraqi President Saddam Hussein that have been challenged – and in some cases disproved – by the United Nations, European governments and even U.S. intelligence reports.

For months, President Bush and his top lieutenants have produced a long list of Iraqi offenses, culminating Sunday with *Vice President Cheney's assertion that Iraq has "reconstituted nuclear weapons."* Previously, administration officials have tied Hussein to al Qaeda, to the Sept. 11, 2001, terrorist attacks, and to an aggressive production of biological and chemical weapons. Bush reiterated many of these charges in his address to the nation last night.

But these assertions are hotly disputed. *Some of the administration's evidence – such as Bush's assertion that Iraq sought to purchase uranium – has been refuted by subsequent discoveries.*²⁶⁵

The next day, March 19, Congressman Dennis Kucinich submitted House Concurrent Resolution 101 that expressed the sense of Congress that the Congressional war resolution, Public Law 107-243, was null and void.²⁶⁶ The resolution stated as grounds: “[O]n the eve of an unprovoked military attack by the United States against the country of Iraq, the public is learning that the Administration’s rationale for commencing hostilities is based on a series of claims that are untrue, unfounded, dubious, or disproven ...”²⁶⁷ The resolution stated that many of those unfounded allegations were highlighted in the above recent article *Bush Clings to Dubious Allegations About Iraq*.²⁶⁸ The resolution noted that ElBaradei had stated that there was no evidence of resumed nuclear activities in Iraq and the resolution further noted that “key evidence supporting the allegation of an Iraqi nuclear program has been exposed as a forgery.”²⁶⁹

²⁶⁵ Walter Pincus and Dana Milbank, *Bush Clings to Dubious Allegations About Iraq*, Wash. Post (Mar. 18, 2003), paras. 1-3 (emphasis added).*

²⁶⁶ H. Con. Res. 101, 108th Cong. (2003).*

²⁶⁷ *Id.* at para. 2.

²⁶⁸ *Id.* at para. 3.

²⁶⁹ *Id.* at paras. 4, 5.

With the Administration's most alarming claim in support of the war evaporating on March 7 due to ElBaradei's report that the documents in support of that claim were fake, and the pressure building to delay the war, President Bush twelve days later on March 19, 2003 started the war rather than providing an accounting to Congress as requested by Congressman Waxman, rather than seeking a vote on a Security Council resolution authorizing the war, and rather than allowing the UN weapons inspectors to finish their inspections, the results of which would have caused even further Congressional efforts and resolutions to delay or stop the war. President Bush saw the writing on the wall. According to Woodward in *Plan of Attack*, at a meeting on March 16: "[President Bush] made clear his position that war would start in a matter of days, not weeks. If there were a delay, [Bush] said, 'Public opinion won't get better and it will get worse in some countries like America.'"²⁷⁰

After the UN weapons inspectors left Iraq due to the commencement of the war, the UN issued subsequent reports indicating that the inspectors had not found any weapons of mass destruction, and that the documents in support of the allegation that Iraq sought uranium from Niger were forged and therefore the allegations were unfounded.²⁷¹

²⁷⁰ Woodward, *Plan of Attack*, *supra* note 173, at p. 357.

²⁷¹ The UN's Monitoring, Verification and Inspection Commission (UNMOVIC), which was the UN agency responsible for chemical and biological inspections, in a report dated May 30, 2003 stated: "In the period during which it performed inspection and monitoring in Iraq, UNMOVIC did not find evidence of the continuation or resumption of programmes of weapons of mass destruction or significant quantities of proscribed items from before the adoption of [the 1991 UN Security Council] resolution 687..." U.N. Monitoring, Verification and Inspection Commission, *Thirteenth Quarterly Report of the Executive Chairman of the United Nations Monitoring, Verification and Inspection Commission in Accordance with Paragraph 12 of Security Council Resolution 1284 (1999)*, U.N. Doc. S/2003/580 (May 30, 2003), p. 5, para. #8.* The above reference about some quantities of proscribed items being found was apparently to mustard gas. *Id.* at p. 30, para. #119.

The UN found no nuclear weapons or nuclear weapons programs, nor found evidence that Iraq had sought uranium. ElBaradei in an IAEA report dated April 14, 2003 stated: "As of 17 March 2003, the IAEA had found no evidence or plausible indication of the revival of a nuclear weapons programme in Iraq." International Atomic Energy Agency (IAEA), *Fifteenth Consolidated Report of the Director General of the International Atomic Energy Agency under Paragraph 16 of Security Council Resolution 1051 (1996)*, U.N. Doc. S/2003/422 (Apr. 14, 2003), p. 11, para. #44.* Concerning allegations about an agreement between Niger and Iraq on the sale of uranium, ElBaradei in the above report stated that the documents that were provided to the IAEA (referring no doubt to the documents provided by the United States government) "were in fact forged documents [and the] IAEA therefore concluded that these specific allegations were unfounded." *Id.* at p. 9, para. #34.

On June 5, 2003 Congressman Kucinich filed House Resolution 260 that requested President Bush to submit to Congress within fourteen days documents and materials in support of the Administration's various claims that Iraq had weapons of mass destruction.²⁷² That resolution had forty-one cosponsors.

The next month, after Wilson's op-ed article that suggested that the Bush Administration took the nation to war under false pretenses, Vice President Cheney directed the attack against those who so claimed that the Administration took the nation to war under false pretenses.

After the start of the war, Congressional resolutions were filed in 2006 and 2007 that sought to repeal the Congressional authorization that allowed President Bush to start the war.²⁷³ However, Congress has not repealed the Congressional authorization for the war perhaps because of what Secretary Powell described as the Pottery Barn rule: You break it, you own it.²⁷⁴

F. The Downing Street Minutes

Also there is an alleged prewar memo dated July 23, 2002, called the Downing Street Minutes, concerning a meeting attended by Prime Minister Tony Blair and senior British officials.²⁷⁵ The memo states:

C [the head of British intelligence] reported on his recent talks in Washington. There was a perceptible shift in attitude. Military action was now seen as inevitable. Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy. The NSC had no patience with the UN route, and no enthusiasm for publishing material on the Iraqi regime's record.²⁷⁶

²⁷² H. Res. 260, 108th Cong. (2003).*

²⁷³ See H. Res. 5875, 109th Cong. (2006);* H. Res. 413, 110th Cong. (2007);* H. Res. 2450, 110th Cong. (2007).*

²⁷⁴ See Woodward, *Plan of Attack*, *supra* note 173, at p. 150.

²⁷⁵ *The Constitution in Crisis*, *supra* note 57, at p. 27.

²⁷⁶ *Id.* at pp. 27-28.

G. Bush Administration's Numerous Other Misleading Statements on Iraq

The report *Iraq on the Record* states that President Bush, Vice President Cheney, Secretary Rumsfeld, Secretary Powell and National Security Advisor Rice made 237 statements about Iraq that were misleading, including the above mentioned uranium claims.²⁷⁷ The statements covered four areas: statements suggesting that Iraq posed an urgent threat, statements about Iraq's nuclear activities (such as the uranium claims), statements about Iraq's biological and chemical weapons capabilities, and statements regarding Iraq's support for al Qaeda.²⁷⁸

The report lists statements starting on March 17, 2002,²⁷⁹ which was one year before the start of the war in Iraq. Most (161) of the misleading statements were made prior to the war while 76 misleading statements were made "after the start of the war to justify the decision to go to war."²⁸⁰ The 237 misleading statements were made in 125 separate public appearances.²⁸¹

According to the report President Bush made a total of fifty-five misleading statements, Vice President Cheney made fifty-one misleading statements, Secretary Rumsfeld made fifty-two misleading statements, Secretary Powell made fifty misleading statements, and National Security Advisor Rice made twenty-nine misleading statements concerning Iraq.²⁸²

Also a more recent report entitled *Iraq: The Wild Card, Orchestrated Deception on the Path to War* released by The Center for Public Integrity on January 22, 2008, provides an even broader review and reveals that the Bush Administration made 935 false claims that Iraq posed a threat to national security.²⁸³ That report states:

²⁷⁷ *Iraq on the Record*, *supra* note 1, at pp. ii, 3, 13.

²⁷⁸ *Id.* at p. 6.

²⁷⁹ *Id.* at pp. ii, 3.

²⁸⁰ *Id.* at pp. ii, 3-4.

²⁸¹ *Id.* at p. 3.

²⁸² *Id.* at pp. 25-29.

²⁸³ Charles Lewis and Mark Reading-Smith, *Iraq: The Wild Card, Orchestrated Deception on the Path to War*, The Center for Public Integrity (Jan. 22, 2008).*

President George W. Bush and seven of his administration's top officials, including Vice President Dick Cheney, National Security Adviser Condoleezza Rice, and Defense Secretary Donald Rumsfeld, made at least 935 *false statements* in the two years following September 11, 2001, *about the national security threat posed by Saddam Hussein's Iraq*. Nearly five years after the U.S. invasion of Iraq, an exhaustive examination of the record shows that the *statements were part of an orchestrated campaign that effectively galvanized public opinion and, in the process, led the nation to war under decidedly false pretenses*.

On at least 532 separate occasions (in speeches, briefings, interviews, testimony, and the like), Bush and these three key officials, along with Secretary of State Colin Powell, Deputy Defense Secretary Paul Wolfowitz, and White House press secretaries Ari Fleischer and Scott McClellan, stated unequivocally that *Iraq had weapons of mass destruction (or was trying to produce or obtain them), links to Al Qaeda, or both. This concerted effort was the underpinning of the Bush administration's case for war.*²⁸⁴

As an example, that report states: "On January 28, 2003, in his annual State of the Union address, Bush asserted: 'The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.'"²⁸⁵ The report also noted that the number of false statements spiked from January 2003 to the eve of the invasion.²⁸⁶

The report concluded:

Bush and the top officials of his administration have so far largely avoided the harsh, sustained glare of formal scrutiny about their personal responsibility for the litany of repeated, false statements in the run-up to the war in Iraq. There has been no congressional investigation, for example, into what exactly was going on inside the Bush White House in that period....

Short of such review, this project provides a heretofore unavailable framework for examining how the U.S. war in Iraq came to pass. *Clearly, it calls into question the repeated assertions of Bush administration officials that they were the unwitting victims of bad intelligence.*

*Above all, the 935 false statements painstakingly presented here finally help to answer two all-too-familiar questions as they apply to Bush and his top advisers: What did they know, and when did they know it?*²⁸⁷

²⁸⁴ *Id.*, Overview, False Pretenses, paras. 1-2 (p. 1 if printed) (emphasis added).

²⁸⁵ *Id.* at para. 12 (p. 2 if printed).

²⁸⁶ *Id.* at para. 14 (pp. 3-4 if printed).

²⁸⁷ *Id.* at paras. 21-23 (p. 4 if printed) (emphasis added).

III. THE CRIMINAL LAW VIOLATIONS

A. Preliminary Matters

The standard of proof for an indictment is not proof beyond a reasonable doubt but as the Supreme Court stated in *Branzburg v. Hayes*, the standard of proof for an indictment is probable cause.²⁸⁸ As noted by another court: “[P]robable cause does not require certainty of guilt or even a preponderance of evidence of guilt, but rather only reasonably trustworthy information that would lead a reasonable person to believe an offense was committed.”²⁸⁹

Some of the above evidence might be considered hearsay but is admissible before a grand jury since the rules prohibiting hearsay do not apply to grand jury proceedings.²⁹⁰ Obviously a grand jury should subpoena President Bush, Vice President Cheney, Rumsfeld, Powell, Rice, Libby, Wolfowitz, Hadley, Tenet, Card, Calio, Schmall, all the members of the NSC and WHIG, and ElBaradei, to testify and to reveal more about what they knew about the uranium claims, when they knew it, who told them and who did they tell, and why the claims were made.

It should be noted that President Bush and said officials have no immunity from criminal prosecution. In *United States v. Vesterso*, the court stated:

Criminal activity is private activity even when it is carried out in a public forum and even though the activity can only be undertaken by an official’s use of a state given power.... [Officials] do not have ... immunity from federal criminal prosecution, even for acts done in an official capacity.²⁹¹

The Supreme Court in *United States v. Gillock* stated: “[T]he judicially fashioned doctrine of official immunity does not reach so far as to immunize criminal conduct ...”²⁹²

²⁸⁸ *Branzburg v. Hayes*, 408 U.S. 665, 686 (1972).

²⁸⁹ *United States v. Patane*, 304 F.3d 1013, 1018 (10th Cir. 2002).

²⁹⁰ Fed. R. Evid. 802, 1101(d)(2).

²⁹¹ *United States v. Vesterso*, 828 F.2d 1234, 1243 (8th Cir. 1987) (citations and citation marks omitted).

²⁹² *United States v. Gillock*, 445 U.S. 360, 372 (1980) (citation and citation marks omitted).

Concerning the five-year statute of limitations, 18 U.S.C. § 3282(a), the last overt act in furtherance of the conspiracy was on July 12, 2003 when Libby, at the instruction of Vice President Cheney, repeated the uranium claim to the press, and the conspiracy apparently ended on July 22, 2003 when the White House publicly revealed the CIA's warnings.²⁹³ Thus the five-year statute of limitations will expire in July 2008 for the violations of 18 U.S.C. § 371. The statute of limitations appears at first to have already expired for President Bush's violations of 18 U.S.C. § 1001, since he made his last statement more than five years ago on January 28, 2003.

However, as noted in *United States v. Midgley*, the legal doctrine of equitable tolling allows statutes of limitations to be tolled where there is misconduct, or where a party "in some extraordinary way [has] been prevented from asserting his rights", or in the "rare situation where equitable tolling is demanded by sound legal principles as well as the interests of justice."²⁹⁴ The Supreme Court in *Irwin v. Department of Veterans Affairs* stated: "We have allowed equitable tolling in situations where the claimant ... has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass."²⁹⁵ The Court of Appeals for the District of Columbia Circuit in *Phillips v. Heine* stated: "In the absence of some Congressional intent to the contrary, federal statutes of limitations are subject to the doctrine of equitable tolling, which shelters the plaintiff from the statute of limitations in cases where strict application would be inequitable."²⁹⁶

The doctrine of equitable estoppel also applies to statutes of limitations but at times is confused with equitable tolling. The Court of Appeals for the District of Columbia Circuit in *Currier v. Radio Free Europe/Radio Liberty, Inc.* stated:

²⁹³ See *supra* pp. 11-13, 30.

²⁹⁴ *United States v. Midgley*, 142 F.3d 174, 178-179 (3d Cir. 1998) (citations and citation marks omitted).

²⁹⁵ *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96 (1990).

²⁹⁶ *Phillips v. Heine*, 984 F.2d 489, 491 (D.C. Cir. 1993).

Both equitable estoppel and equitable tolling operate, in a practical sense, to toll a limitations period. Although the Supreme Court and our court have occasionally conflated the two doctrines, they have distinct criteria. Whereas equitable tolling allows a plaintiff to avoid the bar of limitations period if despite all due diligence he is unable to obtain vital information bearing on the existence of his claim, equitable estoppel in the statute of limitations context prevents a defendant from asserting untimeliness where the defendant has taken *active steps to prevent the plaintiff from litigating in time*.²⁹⁷

In *Currier* the plaintiff brought a retaliation action lawsuit against his employer that had fired him, and the lower court granted summary judgment in favor of the employer on the grounds that the plaintiff's preliminary filing in the matter was filed too late.²⁹⁸ The plaintiff appealed claiming that the employer's statements to the plaintiff that he would be reinstated pursuant to a collateral review of the matter constituted equitable estoppel.²⁹⁹ The Court of Appeals held that an employer's misleading statements that a collateral review would be resolved in an employee's favor can establish equitable estoppel since the "employee *understandably would be reluctant to file a complaint ... for fear he would jeopardize his chances to gain relief* [reinstatement of his job] *voluntarily*."³⁰⁰ Since the plaintiff alleged such a scenario the Court of Appeals reversed the lower court's summary judgment on the matter.³⁰¹

In *Chung v. U.S. Dept. of Justice*, the Court of Appeals for the District of Columbia Circuit stated: "'Equitable estoppel' precludes a defendant, because of his own *inequitable conduct* ... from invoking the statute of limitations. The doctrine of 'equitable tolling,' on the other hand, applies most commonly when the plaintiff despite all due diligence ... is unable to obtain vital information bearing on the existence of his claim."³⁰²

²⁹⁷ *Currier v. Radio Free Europe/Radio Liberty, Inc.*, 159 F.3d 1363, 1367 (D.C. Cir. 1998) (internal citations omitted, emphasis added).

²⁹⁸ *Id.* at 1364-1365.

²⁹⁹ *Id.* at 1365-1368.

³⁰⁰ *Id.* at 1368 (emphasis added).

³⁰¹ *Id.* at 1368-1369.

³⁰² *Chung v. U.S. Dept. of Justice*, 333 F.3d 273, 278 (D.C. Cir. 2003) (internal citations and citation marks omitted, emphasis added).

In *Chung* the lower court dismissed the plaintiff's Privacy Act lawsuit against the Justice Department on the grounds that it was filed too late.³⁰³ However, the Court of Appeals noted that the plaintiff had entered a guilty plea in a federal case that involved cooperation with the Justice Department, and the court held that the plaintiff "may be entitled to relief pursuant to the doctrine of equitable tolling if *fear that his lawsuit would jeopardize his request for leniency – a fear that seems objectively reasonable* in light of the plea agreement and the surrounding circumstances – in fact prevented him from filing" his lawsuit on time.³⁰⁴ The court reversed the lower court's dismissal and remanded the case for further consideration.³⁰⁵

Both the doctrines of equitable tolling and equitable estoppel would prevent President Bush from successfully raising the statute of limitations in a criminal case against him. Under your predecessor, prosecutors were fired for investigating Republicans,³⁰⁶ and obviously a prosecutor would be fired if he or she attempted to bring criminal charges against President Bush. Even the fear about what the Bush Justice Department might do to a prosecutor who brought such charges is the same type of fear described in the *Chung* and *Currier* cases, and would constitute grounds for either equitable tolling or equitable estoppel. Also the circumstances qualify as the rare situation mentioned in the *Midgley* case where sound legal principles and the interests of justice require the tolling of the statute of limitations. Those circumstances include the matters revealed in Congressional hearings on the Justice Department's politicization and its practice of selective prosecution.³⁰⁷

Regarding equitable estoppel, President Bush's authorization of the politicization of the Justice Department and his appointments of such political people to the Department constitute

³⁰³ *Id.* at 274-275.

³⁰⁴ *Id.* at 278-279 (emphasis added).

³⁰⁵ *Id.* at 279-280.

³⁰⁶ *See supra* pp. 2-3, including note 7.

³⁰⁷ *See supra* pp. 2-3, including note 7.

inequitable conduct since that politicization and his appointments of such people are the steps that prevent the Department from prosecuting him.

Furthermore, the failure of the Department to appoint a Special Counsel now for the violations of 18 U.S.C. § 371 in the circumstance where the five-year statute of limitations has not yet expired for those violations provides further grounds for the application of equitable tolling and equitable estoppel regarding the violations of both 18 U.S.C. § 1001 and 18 U.S.C. § 371 if and when charges are filed after President Bush leaves office. Considering the strong case showing the violations of 18 U.S.C. § 371, the failure to appoint a Special Counsel now reveals that President Bush's acts of appointing people to the Department who make decisions based on politics rather than the law have been acts that continue to give him de facto immunity from all prosecution regardless of the strength or merits of the case against him.

B. Violations of Criminal Statute Prohibiting Making False and Fraudulent Statements to Congress, 18 U.S.C. § 1001

Concerning the two uranium claims that President Bush made directly to Congress, which are the basis of Counts One and Two in the draft of an indictment at the end of this report,³⁰⁸ the criminal statute 18 U.S.C. § 1001(a) states:

[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully –

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) *makes any materially false, fictitious, or fraudulent statement or representation*; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title or imprisoned not more than 5 years, or both.³⁰⁹

³⁰⁸ See *infra* pp. 93-99.

³⁰⁹ 18 U.S.C. § 1001(a) (2000) (emphasis added), later amended by Pub. L. 108-458 and Pub. L. 109-248 (changing the prison term to not more than 5 years, or not more than 8 years for certain offenses not relevant to this report). The above quoted 2000 version of the statute was in effect at the time of President Bush's uranium claims.

President Bush's uranium claims in his war resolution report to Congress and in his State of the Union Address to Congress were *false*. The presidential commission report states: "The Iraq Survey Group ... found no evidence that Iraq sought uranium from abroad after 1991."³¹⁰ The ISG report states: "ISG has not found evidence to show that Iraq sought uranium from abroad after 1991 ..."³¹¹ The IAEA reports stated that allegations that Iraq sought uranium from Niger were unfounded because the supporting documents were not authentic.³¹²

More specifically President Bush's statement in his war resolution report that Iraq had since 1998 made "attempts to acquire uranium" and failed to disclose those attempts in its report to the UN was a false statement because there had been no such attempts to acquire uranium.³¹³

President Bush's statements in his State of the Union Address that the "British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa" and that Hussein had not credibly explained that matter and was hiding it from the UN, were false because Hussein had not sought the uranium and also thus did not hide such an act. The British government never learned that Hussein sought the uranium. The synonym for

³¹⁰ *Presidential Commission Report, supra* note 120, at p. 64.

³¹¹ *Iraq Survey Group Report, supra* note 150, vol. 2, Nuclear, at p. 9.

³¹² *See supra* pp. 50 (including note 245), 55 (including note 271).

³¹³ Although President Bush did not sign the war resolution report and he submitted it by means of an introductory letter, *see* Bush, *War Resolution Report, supra* note 22, at 1, he did make the statements in the report. To 'make' means to "cause ... something ... to exist[, to] legally perform, as by executing, signing, or delivering ... a document." *Black's Law Dictionary* (8th ed. 2004), p. 975. President Bush did make the statements in the report since he caused that document to come into existence in compliance with the war resolution that required him to submit the report. *See* Iraq War Res. of 2002, Pub. L. No. 107-243, § 4, 116 Stat. 1501. According to the Supreme Court, even though President Bush might not have personally written the statements in the report, he did make the statements since there was deliberate action on his part in submitting the statements. In a case involving a similar statute that stated that it was a crime when a bank employee "makes any false entry" in bank records, the Court in holding that the statute covered situations where the defendant did not personally write the entry, stated:

The word "make" has many meanings, among them "To cause to exist, appear or occur," *Webster's International Dictionary*, (2d. Ed.). To hold the statute broad enough to include deliberate action from which a false entry by an innocent intermediary necessarily follows, gives to the words employed [in the statute] their fair meaning and is in accord with the evident intent of Congress. To hold that it applies only when the accused personally writes the false entry or affirmatively directs another so to do would emasculate the statute – defeat the very end in view.

United States v. Giles, 300 U.S. 41, 42-43, 48-49 (1937).

‘learn’ is “Discover”.³¹⁴ There is a world of difference between making a judgment, which the British government did,³¹⁵ and making a discovery, which the British government did not do.

President Bush’s statement in his State of the Union Address was also false because the British government never learned or even alleged that any such seeking of uranium was *recent*.³¹⁶ The word ‘recently’ had been in the original draft of the State of the Union Address that the White House sent to the CIA.³¹⁷

President Bush’s above uranium claims in his war resolution report and in his State of the Union Address were not only false but also *fraudulent* since he suppressed material facts to induce Congress not to repeal or modify the war resolution.

The Supreme Court has stated that “[f]raud connotes perjury, falsification, *concealment*, *misrepresentation*.”³¹⁸ Fraud is defined as a “knowing misrepresentation of the truth or *concealment of a material fact to induce* another to act to his or her detriment.”³¹⁹

According to the legal encyclopedia *Corpus Juris Secundum*,

Fraud is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to *gain an advantage over another by false suggestions or by suppression of the truth*....

In its general or generic sense, it comprises all acts, omissions, and concealments involving a breach of *legal or equitable duty* and resulting in damage to another, or the taking of undue or unconscientious advantage of another, and, conversely, fraud cannot exist without a breach of *legal or equitable*

³¹⁴ Webster’s Third New International Dictionary (3d. ed. 1993), p. 1286.

³¹⁵ See *supra* note 77.

³¹⁶ See *supra* note 77.

Although the defense of literal truth applies to charges of making false statements, see *United States v. Milton*, 8 F.3d 39, 45 (D.C. Cir. 1993), that defense does not apply to President Bush’s statements because his statements were false and not literally true, including his statement in his State of the Union Address wherein he did not accurately quote the British White Paper, and added the word ‘recently’. Also, even assuming momentarily that President Bush’s statements were literally true and not false, the criminal statute 18 U.S.C. § 1001(a)(2) is written in the alternative and prohibits statements that are “false ... or fraudulent.” As demonstrated in this report, President Bush’s statements were not just false but also fraudulent, and that alone constitutes a violation of the statute.

³¹⁷ *Senate Intelligence Committee Report*, *supra* note 60, at p. 65.

³¹⁸ *Knauer v. United States*, 328 U.S. 654, 657 (1946) (emphasis added).

³¹⁹ *Black’s Law Dictionary* (8th ed. 2004), p. 685 (emphasis added).

duty, ... it not being fraud for a person to fail to perform acts which he is not bound to perform.³²⁰

However, if a person makes a representation then that person assumes a duty to tell the whole truth and commits fraud by not disclosing the whole truth.

The concealment of a material fact may be equivalent to a false representation and be sufficient upon which to predicate a charge of *fraud*; however, mere silence is not representation and in the absence of a duty to speak ... silence as to a material fact does not of itself constitute fraud....

....

*A duty to speak may arise from partial disclosure, the speaker being under a duty to tell the whole truth although he or she might have said nothing. One conveying a false impression by the disclosure of some facts and the concealment of others is guilty of fraud, even though his statement is true as far as it goes.*³²¹

Courts in civil fraud cases have consistently recognized that when a person has no duty to speak then that person has no duty to make a disclosure, but if that person does make a disclosure then that person assumes a duty to disclose the whole truth and cannot only make statements that are literally true or half true.³²²

Furthermore, according to *Corpus Juris Secundum*:

Fraudulent misrepresentation may be effected by *half truths* calculated to deceive; and a *half truth* may be more *misleading* than an outright lie. A *representation literally true* is actionable if used to create an *impression substantially false*, as where it is accompanied by conduct calculated to deceive or *where it does not state matters which materially qualify that statement....*³²³

³²⁰ 37 C.J.S. *Fraud* § 2 (1997) (footnotes omitted, emphasis added).

³²¹ *Id.* §§ 18, 21 (footnotes omitted, emphasis added).

³²² *Baskin v. Hawley*, 807 F.2d 1120, 1132 (2d Cir. 1986); *Union Pacific Resources Group v. Rhone-Poulenc*, 247 F.3d 574, 586 (5th Cir. 2001); *In Re Sallee*, 286 F.3d 878, 896 (6th Cir. 2002); *Meade v. Cedarapids, Inc.*, 164 F.3d 1218, 1222 (9th Cir. 1999); *Oakland Oil Co. v. Conoco Inc.*, 144 F.3d 1308, 1324 (10th Cir. 1998); *Grove Holding v. First Wisconsin Nat. Bank of Sheboygan*, 12 F.Supp.2d 885, 890 (E.D.Wis. 1998); *In Re Stellant, Inc. Securities Litigation*, 326 F.Supp.2d 970, 985 (D.Minn. 2004); *Odyssey Travel Center, Inc. v. RO Cruises, Inc.*, 262 F.Supp.2d 618, 629 (D.Md. 2003); *Peters v. Amoco Oil Co.*, 57 F.Supp.2d 1268, 1282 (M.D.Ala. 1999).

Unlike criminal fraud, civil fraud also requires proof of reliance on the fraudulent statement and proof of actual injury caused by the statement. 37 C.J.S. *Fraud* § 7 (1997); *Union Pacific Resources Group v. Rhone-Poulenc*, *supra*, 247 F.3d at 586; *Odyssey Travel Center, Inc. v. RO Cruises, Inc.*, *supra*, 262 F.Supp.2d at 628-629; *Peters v. Amoco Oil Co.*, *supra*, 57 F.Supp.2d at 1281. The criminal statute 18 U.S.C. § 1001 does not contain elements of reliance or injury but only that the statement was material, which means capable of affecting a government decision or function. The issue of materiality is discussed later. *See infra* pp. 73-75.

³²³ 37 C.J.S. *Fraud* § 24 (1997) (footnotes omitted, emphasis added).

Concerning the duty to disclose under 18 U.S.C. § 1001, in *United States v. Cisneros* the District Court for the District of Columbia held:

[W]hile there is an option of silence, once a defendant volunteers information, he has an obligation to refrain from telling *half-truths* or from excluding information necessary to make the statements accurate. Since [the defendant] responded to the questions, he had a duty to include all information necessary to make his statements truthful.³²⁴

Thus although no statute or regulation declares that a person making a statement must tell the whole truth rather than just half truths, the courts have recognized a general duty requiring a person who is making a statement to influence another to tell the whole truth and not just half-truths. In such a situation telling only literally true statements or half-truths constitutes fraud.

As noted above, one subsection of 18 U.S.C. § 1001 prohibits concealing or covering up by trick, scheme or device a material fact and another subsection prohibits making false or fraudulent statements.³²⁵ Due to technical reasons this present report does not contend that President Bush's statements violated the concealment subsection but does contend that his statements violated the subsection prohibiting making false and fraudulent statements.³²⁶

³²⁴ *United States v. Cisneros*, 26 F.Supp.2d 24, 42 (D.D.C. 1998) (citation omitted, emphasis added), *appeal dismissed*, *United States v. Cisneros*, 169 F.3d 763 (D.C. Cir. 1999). The court's statement was in reference to the part of the statute in effect at the time, 18 U.S.C. § 1001 (1994), that prohibited concealing or covering up by any trick, scheme, or device a material fact. *United States v. Cisneros*, *supra*, 26 F.Supp.2d at 36-37, 33-34, 42-43. The duty to disclose was not only based on the fact that the defendant chose to make statements on the matter but also was based on an executive order that required individuals seeking government employment to possess such traits as reliability and trustworthiness. *Id.* at 42.

³²⁵ See *supra* p. 63; 18 U.S.C. § 1001(a)(1),(2).

³²⁶ Cases hold that to convict someone of the subsection of the statute that prohibits concealing or covering up a material fact, the government must prove that the defendant had a "legal duty" to disclose that fact. *United States v. Cisneros*, *supra*, 26 F.Supp.2d at 42; *United States v. Crop Growers Corp.*, 954 F.Supp. 335, 344-345 (D.D.C. 1997). Furthermore, the government must prove that any such legal duty to disclose the fact is required by a statute, regulation, or form. *United States v. Cisneros*, *supra*, 26 F.Supp.2d at 42; *United States v. Crop Growers Corp.*, *supra*, 954 F.Supp. at 345; *United States v. Dale*, 782 F.Supp. 615, 626 (D.D.C. 1991); *United States v. Calhoun*, 97 F.3d 518, 526 (11th Cir. 1996). When there is such a duty, the deliberate failure to disclose the material fact is a crime even if the defendant commits no other act. *United States v. Cisneros*, *supra*, 26 F.Supp.2d at 42-43; *United States v. Crop Growers Corp.*, *supra*, 954 F.Supp. at 345; *United States v. Dale*, *supra*, 782 F.Supp. at 626.

For a violation of the other subsection prohibiting making fraudulent statements, a defendant must commit the act of making a fraudulent statement. As mentioned above making a fraudulent statement can consist of making statements to influence another that are only half true, which violates the general duty that the courts have recognized that a person must disclose the whole truth or nothing at all. The difference between the two subsections

President Bush's statements were false as mentioned earlier, and were also fraudulent because he had a duty to disclose the whole truth but failed to do so.

President Bush's uranium claims in his war resolution report and his State of the Union Address were *fraudulent* since he suppressed material facts: the American Intelligence Community's warnings discrediting the uranium claim.³²⁷ President Bush made the fraudulent uranium claims to induce Congress not to repeal or modify the war resolution. The report *Iraq on the Record* states that the Administration's said uranium claims were misleading.³²⁸

President Bush's uranium claim in his State of the Union Address was classic fraud. The first draft asserted the American view that Iraq had sought uranium but the American CIA raised several concerns about the fragmentary nature of the intelligence. Instead of deleting the claim or disclosing the whole truth including the CIA's concerns, the speech was fixed so that it gave the same impression as the first draft and was also, in Tenet's words, "factually correct" since it only repeated what the "British government report said."³²⁹ Even assuming momentarily that the statement was factually correct, it was still fraudulent since fraud may consist of "*half truths*

is that the concealment subsection merely requires a failure to disclose information that a specific statute, regulation or form demands to be disclosed, while the fraudulent statement subsection requires an actual act of making a statement that is fraudulent, which can consist of making a statement that is only half true, which violates the general duty that the courts have recognized to disclose the whole truth or nothing at all. Since there appears to be no specific statute or regulation that required President Bush to disclose information about the uranium, this present report contends that he violated the subsection prohibiting making fraudulent statements since there is a general duty that the courts have recognized that required him to tell the whole truth rather than half truths. This report also contends that President Bush's statements were false and violated the false statement part of the subsection prohibiting false or fraudulent statements. See *supra* note 316. Although no statute or regulation required President Bush to disclose information about the uranium, it should be noted that President Bush's statements were in documents that either the Constitution or the war resolution required him to submit to Congress. See *infra* p. 76, including note 353.

³²⁷ See *supra* pp. 32-34.

³²⁸ *Iraq on the Record*, *supra* note 1, at pp. 3, 13-15. That report defined a statement as misleading "if it conflicted with what intelligence officials knew at the time or involved the selective use of intelligence or the failure to include essential qualifiers or caveats." *Id.* at p. 2. That report and its *Database* stated that the uranium claims were misleading because the CIA had earlier expressed doubts about the claim in two memos to the White House including one addressed to then National Security Advisor Rice, and also the then CIA Director Tenet argued personally against using the claim in a telephone call to Rice's deputy, Hadley. *Id.* at pp. 14-15; *Iraq on the Record Uranium Database*, *supra* note 21, at pp. 1-5.

³²⁹ Tenet, *Statement by George J. Tenet, Director of Central Intelligence*, *supra* note 78, at para. 12.

calculated to deceive.”³³⁰ As noted in *United States v. Cisneros*, once a defendant volunteers information, he has an “obligation to refrain from telling *half-truths*” and must provide “*all information* necessary to make his statements truthful.”³³¹ Any assertion that a CIA official eventually cleared the statement is not a defense to the crime of making a *fraudulent statement* since it is merely *one of the facts* that was part of the whole truth that was *not disclosed*.

Senator Carl Levin has stated that President Bush’s uranium claim in his State of the Union Address was “highly deceptive” because it created the false impression that our intelligence community believed the claim that Iraq had sought uranium.³³²

Also, President Bush’s uranium claim in that Address was not even factually correct as Tenet tried to spin it since President Bush did not merely repeat what the British government “said” but went further and stated that the British government had “learned” (discovered) that Hussein had recently sought the uranium. President Bush’s uranium claim was also false and not, as Tenet contended, factually correct because the British government did not say that Hussein sought the uranium *recently* as President Bush specifically stated in his Address.

Although President Bush will try to make the excuse that he did not have knowledge that his statements were false or fraudulent, that assertion would fail as a defense. Guilty knowledge can be proven by circumstantial evidence. In *United States v. O’Brien* the court upheld the false statement convictions of the president of a company and stated:

[The defendant] submits that the prosecution introduced no direct evidence that he, himself, committed fraud, aided or abetted another’s fraud, or induced some third person to commit fraud. [The court] agree[s]: the government produced nothing in the way of a confession or any other single piece of evidence that, standing alone, might irrefutably prove [the defendant’s] guilty knowledge. But a court will not automatically invalidate a conviction merely because the jury

³³⁰ 37 C.J.S. *Fraud* § 24 (1997) (emphasis added).

³³¹ *United States v. Cisneros*, *supra*, 26 F.Supp.2d at 42 (citation omitted, emphasis added).

³³² Senator Carl Levin, Statement/News Release, *Nomination of Condoleezza Rice to be Secretary of State* (Jan. 25, 2005), paras. 12-15.*

based its finding of scienter [guilty knowledge], and, hence, its verdict, on circumstantial evidence alone. Guilty knowledge, like specific intent, seldom can be established by direct evidence. This principle has particular pertinence in respect to fraud crimes which, by their very nature, often yield little in the way of direct proof. Unless an accomplice turns, a miscreant confesses, or a suspect is snared by his own [speech], prosecutions for fraud must routinely be mounted on the basis of indirect evidence.

This approach to proving guilty knowledge is neither legally problematic nor even controversial. The law is long since settled that the prosecution may prove its case without direct evidence of a defendant's guilty knowledge so long as the array of circumstantial evidence possesses sufficient persuasive power.... [A jury can] infer [a defendant's] guilty knowledge ...³³³

Circumstantial evidence is defined as “[e]vidence based on inference and not on personal knowledge or observation.”³³⁴ An inference is a “conclusion reached by considering other facts and deducing a logical consequence from them.”³³⁵

Since possession of recently stolen property is a circumstance from which a jury may infer that the person in possession knew that it was stolen property,³³⁶ then the fact that a person prepares or possesses a statement that is false and fraudulent, and submits it, are also facts from which a jury can infer that said person knew that the statement was false and fraudulent.

There is certainly strong circumstantial evidence from which to infer that President Bush knew that his statement in his State of the Union Address about Hussein *recently* seeking uranium was false and fraudulent. As mentioned earlier, President Bush's speech was based on the British White Paper, which did not allege that the attempt was recent.

³³³ *United States v. O'Brien*, 14 F.3d 703, 704-705, 706-707 (1st Cir. 1994) (internal citations omitted). The statutes violated in that case were not 18 U.S.C. §§ 1001, 371, but other statutes. *See also United States v. Nivica*, 887 F.2d 1110, 1113 (1st Cir. 1989) (“In a fraud case, the government need not produce direct proof of defendant's scienter in order to convict. Circumstantial proof of criminal intent/guilty knowledge will suffice.... There is no pat formula for such proof; factual circumstances may signal fraudulent intent in ways as diverse as the manifestations of fraud itself.”); *United States v. Swinton*, 75 F.3d 374, 380 (8th Cir. 1996) (“Intent to defraud need not be shown by direct evidence; rather, it may be inferred from all the facts and circumstances surrounding the defendant's actions.”); *United States v. Snelling*, 862 F.2d 150, 154 (8th Cir. 1988) (“Fraudulent intent is often not able to be proven by direct evidence but may be inferred by a series of acts and relevant circumstances.”).

³³⁴ *Black's Law Dictionary* (8th ed. 2004), p. 595.

³³⁵ *Id.* at p. 793.

³³⁶ *See United States v. Triplett*, 104 F.3d 1074, 1078 (8th Cir. 1997).

Concerning President Bush's knowledge that his uranium claims in both his war resolution report to Congress and his State of the Union Address were false and fraudulent, there is the circumstantial evidence of all the warnings that the American Intelligence Community issued that discredited the uranium claim.³³⁷

There is also the circumstantial evidence that the CIA had sent an earlier memo directly to National Security Advisor Rice telling her that the evidence on the uranium claim was weak and that the CIA differed with the British on the issue, and she as a member of President Bush's innermost circle spent hours with him preparing his 2003 State of the Union Address that contained a uranium claim similar to the claim that the CIA told her was based on weak evidence. Also there is the circumstantial evidence of the White House pictures showing President Bush's input into his State of the Union Address, such as reviewing it, sketching notes in drafts of it, rewriting it, and "giv[ing] his speech writing team a few points after revising" it.³³⁸

Furthermore the information in *Iraq on the Record* about President Bush's fifty-three other misleading public statements is important because it can be introduced at a trial as circumstantial evidence to prove that he knew that his uranium claims were false and fraudulent. Under Rule 404(b) of the Federal Rules of Evidence:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of *motive*, opportunity, *intent*, *preparation*, *plan*, *knowledge*, identity, or *absence of mistake or accident*
...³³⁹

President Bush's fifty three other misleading public statements show a pattern of misconduct that constitutes circumstantial evidence from which it can be inferred that he knew that his uranium statements were false and fraudulent, that he had a plan to make false and

³³⁷ See *supra* pp. 32-34.

³³⁸ See *supra* p. 29.

³³⁹ Fed. R. Evid. 404(b) (emphasis added).

fraudulent statements, and that said statements were not a result of a mistake. A few mistakes are plausible but not fifty-five.

There is also the circumstantial evidence of the motive. President Bush needed to scare Congress to thwart any Congressional efforts to delay the start of the war. There is the circumstantial evidence of the Downing Street Minutes of July 23, 2002, which allegedly state: “Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy.”³⁴⁰

Thus there is powerful circumstantial evidence that President Bush knew that his statements about the uranium were false and fraudulent.

Also, the law holds that a person can be convicted of making a false statement even if the person did not have actual knowledge of its falsity as long as the person made the statement with a reckless disregard of whether it was true and with a purpose to avoid learning the truth. In *United States v. White* the court in its ruling that there was sufficient evidence to affirm convictions for violating 18 U.S.C. § 1001, held:

[The] appellants had a duty to make sure [the submissions they gave to the government were true]... Checking available physical data ... was the obvious means to accomplish this end. The appellants’ avowed failure to do so evidenced a *reckless disregard of the truth, with a conscious purpose to avoid learning the truth*. Such action is sufficient to show that a false statement was made knowingly or willfully.³⁴¹

In *United States v. Puente* the court held:

A conviction under § 1001 requires proof that a defendant had the specific intent to make a false or fraudulent statement deliberately or at least with *reckless disregard of the truth and with the purpose to avoid learning the truth*. In this case, [the defendant] claims that he never read the ... form [that he submitted], and the prosecution introduced no evidence that showed that [the defendant] knew what he was signing. Instead, the district court concluded that, by signing the

³⁴⁰ *The Constitution in Crisis, supra* note 57, at p. 27.

³⁴¹ *United States v. White*, 765 F.2d 1469, 1481-1482 (11th Cir. 1985) (emphasis added).

form without reading it, [the defendant] acted with “*a reckless disregard of the truth and with the purpose to avoid learning the truth.*”

This Court finds no error in the district court’s judgment. *Reckless indifference* has been held sufficient to satisfy § 1001’s scienter requirement so that a defendant who *deliberately avoids learning the truth* cannot circumvent criminal sanctions... [A] defendant who deliberately avoids reading the form he is signing cannot avoid criminal sanctions for any false statements contained therein. Any other holding would write § 1001 completely out of existence.³⁴²

In *United States v. O’Brien* the court, as mentioned earlier, affirmed the false statement convictions of the president of a company, and further stated:

We note ... that the element of guilty knowledge in a criminal case may be supplied by inferences drawn from evidence suggesting that a defendant *deliberately blinded himself to what would otherwise have been obvious*. In this case, the stage was appropriately set for such an inference: although appellant claimed a lack of knowledge, the facts, taken in the light most hospitable to the government, strongly suggested that, given the widespread nature of the fraud and the importance to the corporation of the extra revenues generated by it, *only a conscious course of calculated ignorance could have kept the company president from knowing the truth.*³⁴³

Thus even if President Bush made the uranium claims without actual knowledge that the claims were false but made the claims recklessly and with a purpose to avoid learning the truth, or deliberately blinded himself to what would otherwise have been obvious, he is still culpable.

President Bush’s statements were material, which is an element of 18 U.S.C. § 1001. In *United States v. Calhoon* the court stated:

To satisfy the element of materiality, it is enough if the statements had a natural tendency to influence, or be capable of affecting or influencing a government function.... The Government does not have to show actual reliance on the false statements. A statement can be material even if it is ignored or never read by the agency receiving the misstatement. False statements must simply have the capacity to impair or pervert the functioning of a government agency.³⁴⁴

³⁴² *United States v. Puente*, 982 F.2d 156, 159 (5th Cir. 1993) (citations and citation marks omitted, emphasis added).

³⁴³ *United States v. O’Brien*, 14 F.3d 703, 707-708 (1st Cir. 1994) (citations and citation marks omitted, emphasis added).

³⁴⁴ *United States v. Calhoon*, 97 F.3d 518, 530 (11th Cir. 1996) (citations and citation marks omitted); *see also United States v. Puente, supra*, 982 F.2d at 159 (to be material, statement need only be capable of influencing a government function and it need not even be read by the government). As mentioned earlier, unlike civil fraud § 1001 does not require proof of reliance or actual injury but only that the statement was material. *See supra* note 322.

In the view of the Vice President's Office, President Bush's uranium claim concerned a "matter of signal importance: the rationale for the war in Iraq."³⁴⁵ President Bush's uranium statements certainly had the capacity to influence at least some of the 535 Members of Congress regarding their various Congressional functions including whether to vote for House Concurrent Resolution 2, and or whether to repeal the war resolution or modify it to delay the start of the war such as specifically stating that President Bush could not start the war until after UN weapons inspectors finished their inspections.

More specifically, President Bush's uranium claims were material to the two grounds for the war resolution and whether Congress believed that such grounds were still valid. The war resolution authorized President Bush to engage the American military to (1) defend the national security against the threat posed by Iraq and (2) enforce UN Security Council resolutions.³⁴⁶ The UN Security Council subsequently passed S.C. Res. 1441 that demanded that Iraq disclose all its programs to develop chemical, biological, and nuclear weapons, and under the resolution inspectors could destroy said weapons and related items.³⁴⁷

Concerning the first ground, President Bush's uranium claims were capable of deceiving Congress into believing that even though UN weapons inspectors had found no nuclear weapons in Iraq nor evidence that Iraq had revived its nuclear weapons program, Iraq did in fact have such weapons and such a program since it had secretly sought the fuel for a nuclear weapon, and thus the United States needed to defend its national security by invading Iraq to prevent Iraq's use of those nuclear weapons. Concerning the second ground, President Bush's uranium claims were capable of deceiving Congress into believing that Iraq not only had a current nuclear weapons

³⁴⁵ *Government's Response to Defendant's Third Motion to Compel Discovery*, *supra* note 39, at p. 18.

³⁴⁶ Iraq War Res. of 2002, Pub. L. No. 107-243, § 3(a), 116 Stat. 1501.

³⁴⁷ Security Council Resolution 1441, *supra* note 191, at pp. 3-4, paras. #3, #7.

program but Iraq violated S.C. Res. 1441 by not disclosing to the UN its attempts to acquire uranium under that program, and therefore the United States needed to invade Iraq to enforce the part of S.C. Res. 1441 concerning finding and destroying nuclear weapons and related items.

The portion of President Bush's false claim in his State of the Union Address about when Iraq sought the uranium certainly had the capacity to influence and scare Congress. President Bush's statement that Iraq *recently* sought uranium was material because it would be one thing if Iraq had nuclear weapons in the past and showed a track record like other nations of having but not using nuclear weapons but it would be another thing if Iraq just got the nuclear fuel and could now at any moment launch a nuclear weapon or secretly give it to terrorists.

President Bush's uranium claims were material to Congressional thinking. Wolfowitz as a practical matter admitted that the Administration used the weapons of mass destruction claim as the core reason to obtain and maintain Congressional authorization for the war because that was the only ground that Congress would agree on as serious enough to start a war.³⁴⁸ The uranium claim became the key to that strategy when the UN inspectors found no weapons of mass destruction. The report *Iraq on the Record* states that the uranium claim was "one of few new pieces of intelligence" and the Administration offered it "as proof that Iraq had reconstituted its nuclear weapons program."³⁴⁹ In their ability to evoke horror, nuclear weapons are in a class by themselves and thus the Administration's uranium claims had a large impact on congressional perceptions about the threat posed by Iraq.³⁵⁰ According to a press report the White House believed that everyone "understood the connection between uranium and the bomb", and the uranium claim "was the easiest way for the Bush administration to raise alarms."³⁵¹

³⁴⁸ See Wolfowitz, *Deputy Secretary Wolfowitz Interview with Sam Tannenhaus*, *supra* note 59, at p. 14.

³⁴⁹ *Iraq on the Record*, *supra* note 1, at p. 13.

³⁵⁰ *See Id.* at pp. 7-8.

³⁵¹ *The Constitution in Crisis*, *supra* note 57, at p. 35.

It must be noted that § 1001 does not prohibit all false and fraudulent statements to Congress but covers only certain matters such as (1) statements in “a *document* required by law, rule, or regulation to be submitted to the Congress” *or* (2) statements submitted as part of or applicable to “any investigation or *review*, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress.”³⁵² President Bush’s war resolution report and his State of the Union Address satisfy both criteria.³⁵³

³⁵² 18 U.S.C. § 1001(c) (emphasis added).

³⁵³ Section 1001 covers the statement that President Bush made in his war resolution report since the report was a document that the Congressional war resolution required the President to submit to Congress. The war resolution states that the “President shall, at least once every 60 days, submit to the Congress a report on matters relevant to this joint resolution.” Iraq War Res. of 2002, Pub. L. No. 107-243, § 4(a), 116 Stat. 1501. President Bush in his said report actually stated that “[p]ursuant to ... Public Law 107-243 [the war resolution] ... I am providing a report prepared by my Administration on matters relevant to that Resolution.” Bush, *War Resolution Report*, *supra* note 22, at p. 1. President Bush’s war resolution report to Congress is labeled House Document 108-23. *Id.*, Cover.

Section 1001 covers President Bush’s war resolution report also because it was applicable to an “investigation or *review*, conducted pursuant to the authority of [a] committee ... of the Congress.” 18 U.S.C. § 1001(c)(2) (emphasis added). As noted above, the war resolution stated that the President must submit to the Congress a “report on matters relevant to this joint resolution.” As noted on the cover of House Document 108-23, that report was “[r]eferred to the Committee on International Relations.” Bush, *War Resolution Report*, *supra*, Cover. The obvious purpose for the law requiring such a report is for Congress and the said committee to review that report, and obviously Congress and the said committee have the authority to review said matters.

Similarly § 1001 covers the statement that President Bush made in his State of the Union Address because the law required President Bush to submit such an Address to Congress, the Address was a document, and also it was submitted for Congressional review. The Constitution states that the President “shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient.” U.S. Const. art. II, § 3. President Bush’s 2003 State of the Union Address is a document and is labeled House Document 108-1. Bush, *State of the Union Report*, *supra* note 25, Cover. That document is not a transcript of a speech since at the end it contains a name, address and date: “GEORGE W. BUSH. THE WHITE HOUSE, *January 28, 2003.*” *Id.* at p. 11. As shown by a picture on the White House website, President Bush upon his arrival at the House Chamber handed a copy of his 2003 State of the Union Address to Vice President Cheney and Speaker of the House Dennis Hastert. The White House, *State of the Union 2003* (picture of President Bush and Vice President Cheney).*

Section 1001 covers President Bush’s State of the Union Address also because it was submitted for Congressional review. As noted above, the Constitution directs the President to “give to the Congress [i]nformation of [n] the State of the Union” and make “recommend[ations]” for Congress’s “[c]onsideration.” U.S. Const. art. II, § 3. Concerning the 2003 State of the Union Address, Congress had passed a resolution that provided for a “joint session of Congress to receive a message from the President on the state of the Union.” H. Con. Res. 12, 108th Cong. (2003).* As noted on the cover of House Document 108-1, that document was “referred to the Committee on the Whole House.” Bush, *State of the Union Report*, *supra*, Cover. The obvious purpose for such laws is for Congress to review and consider such information, recommendations and messages, and obviously Congress (the Committee on the Whole House) has the authority to review said matters.

Thus there is overwhelming direct and circumstantial evidence that President Bush made false and fraudulent statements to Congress, and thus violated 18 U.S.C. § 1001(a)(2). That evidence surpasses the probable cause standard for an indictment. At the end of this report is a draft of an indictment that in Counts One and Two sets forth said offenses.³⁵⁴

C. Violations of Criminal Statute Prohibiting Conspiring to Defraud Congress, 18 U.S.C. § 371

The uranium claims that President Bush, National Security Advisor Rice, Secretary Powell, and Secretary Rumsfeld made in January 2003 were false because Iraq and Hussein had made no such attempts or efforts to acquire uranium, and also thus Iraq and Hussein did not fail to credibly explain such matters nor hide said matters from the UN.³⁵⁵ President Bush's claim that the British government had learned that Iraq had recently sought uranium was also false because that government did not learn or even allege that such seeking of uranium was recent.³⁵⁶

Also, the uranium claims that they made were fraudulent, as defined above,³⁵⁷ because when they made those claims they did not disclose the warnings discrediting those claims issued by members of America's Intelligence Community, including the CIA, INR, and NIC.³⁵⁸

The statements about the NIE that Vice President Cheney in July 2003 instructed Libby to make to the press, and which Libby did make, to support President Bush's uranium claim were fraudulent because said statements did not mention the warnings that discredited the claim in the NIE that Iraq had tried to procure uranium. The warnings included the INR's dissent in the NIE, the later warning of the NIC (which had published the NIE) that the Niger uranium claim was

³⁵⁴ See *infra* pp. 93-99.

³⁵⁵ See *supra* pp. 31, 50, 55 (reports of the presidential commission, ISG, and UN's IAEA).

³⁵⁶ See *supra* note 77.

³⁵⁷ See *supra* pp. 65-67.

³⁵⁸ See *supra* pp. 32-34.

baseless, the NIC's later memo stating that it was highly unlikely that Niger sold uranium to Iraq in recent years, and the memo to Vice President Cheney stating that the CIA had expressed serious concerns about the credibility of the uranium claim prior to the publication of the NIE.³⁵⁹

Concerning said uranium claims, which are the basis of Count Three in the draft of an indictment at the end of this report,³⁶⁰ the criminal statute 18 U.S.C. § 371 states:

If two or more persons conspire either to commit any offense against the United States, or to *defraud the United States*, or any agency thereof in *any manner or for any purpose*, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.³⁶¹

This statute does not restrict its application to documents that are required to be given to Congress, does not require proof that any statements made to effect the object of the conspiracy were made directly to Congress or were submitted as part of a formal review, and does not require proof that the conspiracy was successful.

The Supreme Court in *Dennis v. United States* stated that the type of conduct that is prohibited by § 371 “is not confined to fraud as that term has been defined in the common law [but] reaches any conspiracy for the purpose of *impairing, obstructing, or defeating the lawful function* of any department of government.”³⁶²

In 1924 in *Hammerschmidt v. United States*, the Supreme Court stated:

To conspire to defraud the United States means primarily to cheat the government out of property or money, but it also means to *interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest*. It is not necessary that the government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane, or the overreaching of those charged with carrying out the governmental intention.³⁶³

³⁵⁹ See *supra* p. 34.

³⁶⁰ See *infra* pp. 99-103.

³⁶¹ 18 U.S.C. § 371 (2000) (emphasis added).

³⁶² *Dennis v. United States*, 384 U.S. 855, 861 (1966) (citations and citation marks omitted, emphasis added).

³⁶³ *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924) (emphasis added). The earlier conspiracy

More recently, in 1996 the Second Circuit in *United States v. Ballistrea* stated:

A conspiracy to defraud under § 371 embraces any conspiracy for the purpose of *impairing, obstructing, or defeating the lawful function* of any department of government.... [I]t is well established that the term “defraud” as used in § 371 is interpreted much more broadly than when it is used in the mail and wire fraud statutes, and that this provision not only reaches schemes which deprive the government of money or property, but also is designed to protect the integrity of the United States and its agencies. Thus, this section covers acts that *interfere with or obstruct one of the United States’ lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest*, even if the Government is not subjected to property or pecuniary loss by the fraud. Moreover, so long as *deceitful or dishonest means are employed to obstruct governmental functions*, the impairment need not involve the violation of a separate statute. We thus agree with the Ninth Circuit’s summary of the four elements of a § 371 conspiracy-to-defraud offense: The government need only show (1) that defendant entered into an agreement (2) to *obstruct a lawful function* of the government (3) by *deceitful or dishonest means* and (4) at least one overt act in furtherance of the conspiracy.³⁶⁴

In the present case, there is strong circumstantial evidence that President Bush, Vice President Cheney, Secretary Rumsfeld, Secretary Powell, National Security Advisor Rice, and Vice President Cheney’s Chief of Staff Libby on or about January 2003 entered into an agreement to impair, obstruct and interfere with the lawful functions of Congress to evaluate whether it should repeal or modify the war resolution. That agreement included using the deceitful and dishonest means of making or instructing others to make false and or fraudulent public statements which said or in effect said that Iraq had sought the uranium fuel for a nuclear bomb, and or which said or in effect said that Iraq had not disclosed that fact to the UN and thus had not complied with S.C. Res. 1441 that required such a disclosure. The purpose and objective of said statements was to scare Congress so that it would not repeal or modify the war resolution.

statute discussed in that case contained basically the same wording as 18 U.S.C. § 371.

³⁶⁴ *United States v. Ballistrea*, 101 F.3d 827, 831-832 (2d Cir. 1996) (internal citations and citation marks omitted, emphasis added). See also *United States v. Gosselin World Wide Moving, N.V.*, 411 F.3d 502, 516 (4th Cir. 2005) (Conspiracy to defraud the government under 18 U.S.C. § 371 covers “not only conspiracies intended to involve the loss of government funds but also any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of government.” (citation omitted)).

In January 2003, four of the above officials committed five overt acts in furtherance of their conspiracy agreement by making the above five false and fraudulent uranium claims. After the start of the war, in July 2003 in furtherance of the conspiracy Libby, after being so instructed by Vice President Cheney, committed the overt acts of repeating the uranium claim to the press.

Concerning the element of an agreement, the court in *United States v. Weidner* stated:

The core of a conspiracy is an agreement to commit an unlawful act. The critical inquiry is whether the circumstances, acts, and conduct of the parties are of such a character that the minds of reasonable men may conclude therefrom that an unlawful agreement exists. The existence of the agreement to violate the law may be *inferred from a unity of purpose or common design* and understanding among conspirators to accomplish the objects of the conspiracy.

Secrecy and concealment are often necessary to a successful conspiracy, and, as a result, direct evidence of the crime is frequently difficult to obtain. Therefore, conspiracy convictions may be based on *circumstantial evidence, and the jury may infer conspiracy from the defendants' conduct and other circumstantial evidence indicating coordination and concert of action.*³⁶⁵

The coordination and concert of the five false and fraudulent statements that Iraq attempted to acquire uranium that President Bush, Secretary Rumsfeld, Secretary Powell, and National Security Advisor Rice made within the short time span of January 20 to January 29, 2003, and Vice President Cheney's instructions to Libby in July 2003 that he provide information to the press in support of President Bush's uranium claim, is sufficient proof that they had an agreement or plan to mislead Congress into believing that Iraq attempted to acquire uranium. Since evidence of other crimes, wrongs, or acts may be admissible as "proof of motive, opportunity, intent, preparation, [or] *plan*",³⁶⁶ then Vice President Cheney's and Libby's actions

³⁶⁵ *United States v. Weidner*, 437 F.3d 1023, 1033 (10th Cir. 2006) (internal citations and citation marks omitted, emphasis added). See also *United States v. Hartley*, 678 F.2d 961, 972 (11th Cir. 1982) ("There is no requirement ... that the [conspiracy] agreement be express. In fact, the secret nature of a conspiracy in most instances requires the trier of fact to infer its existence from the surrounding circumstances."); *United States v. Coveney*, 995 F.2d 578, 594 (5th Cir. 1993) ("Proof of a specific agreement is not necessary; the jury may infer an agreement from a concert of action.").

³⁶⁶ Fed. R. Evid. 404(b) (emphasis added).

in July 2003 to bolster the January 2003 uranium claims can be considered as proof that they were involved in the original plan behind the January uranium claims.

There is not only the circumstantial evidence that their statements were similar in nature but most of said officials also had a close working relationship as the key members of the NSC. The NSC is the “President’s principal *forum* for considering national security and foreign policy matters” and “serves as the President’s principal arm for *coordinating* these policies.”³⁶⁷ Rice and the White House Chief of Staff Card were not only members or attendees at meetings of the NSC but were also members of WHIG, a group that sought to persuade Congress of the need to invade Iraq and whose other members included Calio who was President Bush’s personal lobbyist to Congress, and Libby.³⁶⁸ Libby was in charge of producing papers that Iraq had weapons of mass destruction.³⁶⁹ According to Woodward, WHIG “coordinat[ed] the daily message on Iraq and the ‘echo’ – the effort to reinforce the president’s themes and arguments with statements and media appearances by administration officials.”³⁷⁰

Prior to the five uranium claims, Members of Congress on January 7, 2003 introduced a resolution that sought to repeal the war resolution.³⁷¹ According to Woodward in January 2003 “Card’s White House Iraq Group was *planning* a big rollout of speeches and documents to counter Saddam and the growing international antiwar movement.”³⁷²

Thus it is obvious that the NSC and WHIG jointly planned the five uranium claims that the Bush Administration made in January 2003.

³⁶⁷ The White House, *National Security Council*, *supra* note 114, at para. 3 (emphasis added).

³⁶⁸ See *The Constitution in Crisis*, *supra* note 57, at p. 33 (see also *supra*, note 175); Woodward, *Plan of Attack*, *supra* note 173, at p. 168.

³⁶⁹ See *supra* p. 9.

³⁷⁰ Woodward, *Plan of Attack*, *supra* note 173, at p. 172.

³⁷¹ H. Con. Res. 2 (2003), *supra* note 201.

³⁷² Woodward, *Plan of Attack*, *supra* note 173, at p. 286 (emphasis added).

Also the members of a conspiracy need not enter the agreement all at the same time nor do much to join the conspiracy agreement.³⁷³

Regarding the element of impairing or obstructing a governmental function, the agreement sought to impair and obstruct the function of Congress to determine whether to modify or repeal the resolution that had authorized President Bush to use military force against Iraq.³⁷⁴ Under the earlier War Powers Resolution of 1973, President Bush could not use military force against Iraq for more than ninety days without a specific Congressional authorization or a Congressional declaration of war.³⁷⁵ Also, without such an authorization or declaration of war, Congress could at anytime direct President Bush to remove American troops from Iraq.³⁷⁶ Since Congress could repeal the Congressional resolution that had authorized the war and order President Bush to remove the troops, the conspiracy sought to impair the function of Congress to repeal or modify the resolution in general, both prior to and after the start of the war. As noted earlier, there were various Congressional resolutions filed both prior to and after the start of the war to either delay the start of the war or repeal the Congressional war authorization.³⁷⁷ As

³⁷³ In *United States v. Cabrera* the court stated that the government need only prove that the defendant “knew of the agreement, and that the defendant knowingly became a part of the conspiracy.” *United States v. Cabrera*, 116 F.3d 1243, 1244 (8th Cir. 1997) (citations and citation marks omitted) (the conspiracy statute in that case was not 18 U.S.C. § 371 but 21 U.S.C. § 846). The court stated that the government “must establish some degree of knowing involvement and cooperation” but “[o]nce a conspiracy is established, even slight evidence connecting a defendant to the conspiracy may be sufficient to prove the defendant’s involvement.” *United States v. Cabrera, supra*, 116 F.3d at 1244-1245 (internal citations and citation marks omitted). The court stated that a defendant’s “participation in [a conspiracy] must often be established by way of inference from the surrounding circumstances.” *Id.* at 1245 (citation and citation marks omitted). In *United States v. Reyes*, the court stated that to prove that a defendant joined an “existing conspiracy [t]he government must first prove the defendant knew the ... conspiracy existed and that he knowingly and willfully joined in it [, and t]he prosecution also must show that [the defendant] had some knowledge of the unlawful aims of the conspiracy.” *United States v. Reyes*, 302 F.3d 48, 53 (2d Cir. 2002) (internal citations omitted). The court also stated: “Once the conspiracy has been shown to exist ... evidence sufficient to link another defendant to it need not be overwhelming, and may be proven entirely by circumstantial evidence.” *Id.* at 53.

³⁷⁴ Iraq War Res. of 2002, Pub. L. No. 107-243, 116 Stat. 1498.

³⁷⁵ 50 U.S.C. § 1544(b).

³⁷⁶ 50 U.S.C. § 1544(c).

³⁷⁷ See *supra* pp. 39, 47-48, 54, 56.

noted in *Iraq on the Record*, 76 of the 237 misleading statements that said officials made were made “after the start of the war to justify the decision to go to war.”³⁷⁸

The initial five uranium claims were made to defuse the movement for more time for weapons inspections, which was a movement that arose when the UN weapons inspectors after nearly two months of inspections had not found any weapons of mass destruction. The speeches and reports containing the uranium claims usually contained direct or indirect references to that movement.³⁷⁹ The Administration’s biggest worry was whether the Congressional movement for more inspection time as expressed in House Concurrent Resolution 2 and the letter from 130 Members of Congress might gain more support in Congress causing Congress to change its mind about authorizing the first preemptive war in American history. As noted earlier, there were additional pre war resolutions that sought to stop or delay the war but the Administration’s uranium claims restrained that Congressional movement to stop or delay the start of the war.³⁸⁰

The Administration’s five pre war uranium claims in January 2003 could obstruct the functions of Congress regarding whether to repeal or modify the war resolution for the same reasons that President Bush’s two uranium claims were material: the claims were capable of deceiving Congress into believing that the grounds for the war resolution were still valid despite the fact that UN weapons inspectors had not found any nuclear weapons or a nuclear weapons program in Iraq.³⁸¹

Vice President Cheney’s and Libby’s offensive in July 2003 to bolster President Bush’s January 2003 uranium claims was meant to convince Congress that Iraq had in fact sought the uranium fuel for a nuclear weapon and had been seeking a nuclear weapons capability, and

³⁷⁸ *Iraq on the Record*, *supra* note 1, at p. ii.

³⁷⁹ *See supra* pp. 43-45.

³⁸⁰ *See supra* pp. 46-55.

³⁸¹ *See supra* pp. 73-75.

therefore there were legitimate grounds for the war and the United States did not go to war under false pretenses as Wilson had claimed, and thus Congress should not repeal the war resolution on the belief that the grounds for the war had been fraudulent. There were not only Congressional resolutions filed prior to the war that sought to repeal the authorization for the war but as noted earlier there was a Congressional resolution filed in June 2003 that sought from President Bush the documents in support of the Administration's claims that Iraq had weapons of mass destruction,³⁸² and there were Congressional resolutions filed in 2006 and 2007 that sought to repeal the Congressional authorization for the war.³⁸³

The Administration's uranium claims certainly were capable of obstructing the functions of Congress. Wolfowitz revealed that the Administration settled on the claim that Iraq had weapons of mass destruction as the core reason for the war because that was the only claim that Congress would agree on as serious enough to grant the Administration the authority to start a war against Iraq.³⁸⁴ After the UN inspectors found no weapons of mass destruction, the uranium claims became the key to maintaining that Congressional authority and not losing it especially before actually starting the war. As noted in *Iraq on the Record*, the Administration's uranium claim was "one of few new pieces of intelligence, [and] this claim was *repeated multiple times* by Administration officials as *proof* that Iraq had reconstituted its nuclear weapons program."³⁸⁵ Nuclear weapons evoke horror more so than other weapons and thus the Administration's claims about Iraq's nuclear capabilities had a large impact on congressional perceptions about the threat posed by Iraq.³⁸⁶ The White House believed that everyone understood the connection between uranium and the bomb, and the uranium claim was the easiest way for the Administration to raise

³⁸² See *supra* p. 56.

³⁸³ See *supra* p. 56.

³⁸⁴ See Wolfowitz, *Deputy Secretary Wolfowitz Interview with Sam Tannenhaus*, *supra* note 59, at p. 14.

³⁸⁵ *Iraq on the Record*, *supra* note 1, at p. 13 (emphasis added).

³⁸⁶ See *Id.* at pp. 7-8.

alarms.³⁸⁷ Even after the start of the war, the Administration up until early July 2003 still pushed the uranium claim as a “rationale for the war” when Vice President Cheney instructed Libby to provide deep background information to the press to support the uranium claim that President Bush had made in his State of the Union Address.³⁸⁸

Regarding the element of deceitful and dishonest means, the agreement sought to impair and obstruct Congress’ said functions by the deceitful and dishonest means of the said officials making or instructing others to make the above false and or fraudulent public statements that Iraq had sought the uranium fuel for nuclear weapons and had not disclosed that fact to the UN as required by Security Council Resolution 1441, and the deceitful and dishonest means of the said officials not disclosing nor instructing others to disclose the warnings discrediting the uranium claim issued by members of the American Intelligence Community, including the CIA, INR, and NIC.³⁸⁹

³⁸⁷ See *The Constitution in Crisis*, *supra* note 57, at p. 35.

³⁸⁸ See *supra* pp. 8-13.

³⁸⁹ See *supra* pp. 6-13, 32-34.

President Bush and said officials will no doubt contend that the functions of Congress were not impaired because Congress had the same information on the uranium claim’s weakness as they did. However, Congress did not have the same information. As mentioned earlier, intelligence officials told some Members of Congress about the weakness of the claim and the unreliability of the reporting on it. See *supra* pp. 18-20. However, such information would have been given to only certain Members of Congress on a few committees with oversight responsibilities who could not release that information to all 535 Members of Congress.

Also, although it might be assumed that all Members of Congress received copies of or had access to the October 1, 2002 NIE containing the opinion of the State Department’s INR that the claims about Iraq’s attempt to acquire uranium were highly dubious, it cannot be assumed that the Members of Congress interested in the uranium issue read the INR’s dissenting opinion. The INR’s dissent was placed in an annex concerning another issue (aluminum tubes) that was sixty pages away from the main part of the NIE containing the assertion that Iraq had sought uranium from African countries. *Senate Intelligence Committee Report*, *supra* note 60, at pp. 52-54. Thus while it may be assumed that all Members of Congress had copies of or access to the NIE, it is not assumed that those interested in the uranium issue read the entire annex concerning the aluminum issue, which contained the INR’s dissent. Also the NIE only contained the INR’s dissenting opinion and did not contain the views of intelligence officials expressed to the intelligence committees referred to in the above paragraph. The October 2002 NIE did not contain the opinion of CIA Director Tenet who told the White House on October 6, 2002 that President Bush should not make the uranium claim because according to his analysts the reporting on the claim was weak. *Id.* at p. 56.

Thus some information about the weakness of the uranium claim was given to certain Members of Congress and some more limited information was available to all Members but in an obscure place. However that limited information paled in comparison to all the above information about the weakness of the claim that the Administration had but did not disclose.

The deceitful and dishonest means that the said officials used were not always direct statements to Congress but included public statements that Members of Congress would obviously listen to or read. As observed in *United States v. Ballistrea*, the means to defraud can include means other than actual contact between the defendants and the government entity.³⁹⁰ Unlike the criminal statute 18 U.S.C. § 1001, which has some restrictions on its application regarding Congress, the conspiracy statute has no exceptions to its application and includes any dishonest means of impairing or obstructing Congress' functions.

Concerning the last element of an overt act in furtherance of the conspiracy, there were the five such acts of making the initial five said statements. Also there were the overt acts of Libby, after being so instructed by Vice President Cheney, repeating the uranium claim to the press.

Although Vice President Cheney did not commit any actions in public view to promote the conspiracy such as making public statements that Iraq had sought uranium, he apparently was the ringleader of the conspiracy. Vice President Cheney's office was in charge at the White House of producing papers arguing that Iraq had weapons of mass destruction and he committed the act of instructing his Chief of Staff Libby to promulgate the uranium claim to the press on deep background in early July 2003, and thus it can be inferred that Vice President Cheney directed the campaign to promulgate that same claim a few months earlier in January 2003. As noted earlier, Vice President Cheney's actions on July 7, 12, 2003 instructing Libby to promulgate the uranium claim to bolster the January 2003 uranium claim can be considered as proof that they were involved in the plan behind the January uranium claims.³⁹¹ It was not until

³⁹⁰ *United States v. Ballistrea, supra*, 101 F.3d at 832-833.

³⁹¹ *See supra* pp. 80-81, 11-13.

a July 22, 2003 White House press conference that the White House admitted that the CIA in October 2002 had warned the White House about the uranium claim.³⁹²

Furthermore, not all the members of a conspiracy need to commit an overt act in furtherance of the conspiracy to be culpable since only one member of the conspiracy has to commit such an act.³⁹³

Obviously the crime of conspiracy does not require proof that the conspiracy was successful but only requires proof of an agreement and one overt act in furtherance of the conspiracy agreement.³⁹⁴ Thus it is not necessary to prove that the Administration's uranium claims actually impaired a function of Congress or had an effect on Congress.

However after the UN weapons inspectors had not found any weapons of mass destruction or evidence that Iraq had revived its nuclear weapons program, the Administration's January 2003 uranium lies stalled the Congressional movement that sought to repeal the war resolution and or at least delay the war to allow more time for weapons inspections. The Administration pushed the uranium claims as evidence that the weapons inspectors had missed some critical evidence that Iraq was hiding. When ElBaradei reported on March 7, 2003 that the evidence in support of the uranium claim was fake, President Bush saw the writing on the wall. According to Woodward in *Plan of Attack*, at a meeting on March 16: "[President Bush] made clear his position that war would start in a matter of days, not weeks. If there were a delay, [Bush] said, 'Public opinion won't get better and it will get worse in some countries like

³⁹² The White House, *Press Briefing on Iraq WMD and SOTU Speech*, *supra* note 146, at paras. 47-49 (p. 4 if printed).

³⁹³ 18 U.S.C. § 371. The members of the conspiracy who do not commit overt acts become culpable by merely joining and being involved in the conspiracy. *See supra* p. 82, including note 373.

³⁹⁴ Section 371 and § 1001 are similar in that neither requires proof of success. Section 1001 only requires that the statement was material (capable of influencing a government decision or function) and § 371 only requires one overt act in furtherance of the conspiracy and does not require proof that the conspiracy was successful.

America.”³⁹⁵ President Bush rushed the nation to war on March 19, twelve days after ElBaradei’s report of March 7, rather than allow more time for weapons inspections, the results of which would have further contradicted the Administration’s claim that Iraq was a nuclear threat, and rather than allow more time for the growth of the Congressional movement that sought to repeal the war resolution and or delay the start of the war.

If the whole truth had been told prior to the war it is highly probable that Congress would have restricted President Bush’s power to commence the war against Iraq at will and required him to at least await the conclusion of the UN weapons inspections. A survey released by *ABC News* on January 5, 2007 reveals that the war resolution would not have passed in the Senate in October 2002 if its Members knew then what they knew at the time of the survey.³⁹⁶

Even though Congress now knows the truth and that Iraq had no nuclear weapons or programs, nor sought uranium, Congress has not yet repealed the war resolution perhaps because of what Secretary Powell described as the Pottery Barn rule: You break it, you own it.³⁹⁷

Although President Bush and said officials will make the claim that they had no knowledge that the statements they made, or instructed others to make, were false and fraudulent, that claim will fail. As noted earlier, guilty knowledge is usually proven not by direct evidence but by inference from circumstantial evidence.³⁹⁸ The numerous warnings discrediting the uranium claim that the American Intelligence Community issued to the White House constitute overwhelming circumstantial evidence from which it can be inferred that President Bush and said officials knew that their uranium claims were false and fraudulent.³⁹⁹

³⁹⁵ Woodward, *Plan of Attack*, *supra* note 173, at p. 357.

³⁹⁶ Jake Tapper, *Senate Regrets the Vote to Enter Iraq*, *ABC News Survey Shows that Knowing Then What It Knows Now, 2002 Senate Would Vote Against Giving President War Powers*, ABC News (Jan. 5, 2007).* For the statements or views of specific Senators, *see Iraq Vote: What the Senators Said*, ABC News (Jan. 5, 2007).*

³⁹⁷ *See* Woodward, *Plan of Attack*, *supra* note 173, at p. 150.

³⁹⁸ *See supra* pp. 69-72.

³⁹⁹ *See supra* pp. 32-34.

There is also the circumstantial evidence that the CIA had in October 2002 sent a memo directly to National Security Advisor Rice telling her that the evidence on the uranium claim was weak, and she spent hours with President Bush preparing his 2003 State of the Union Address. There is also the circumstantial evidence of the White House pictures showing how President Bush prepared and personally rewrote that Address. Also Secretary Powell has admitted that he never believed the uranium claim that President Bush made in his State of the Union Address, and apparently never believed his own statement that Iraq was still trying to procure uranium. Also it was Secretary Rumsfeld's Pentagon that asked for the NIC memo on the uranium claim. Thus of the four members of the conspiracy who made uranium claims in January 2003, one has admitted that he never believed the uranium claim, another ran the Pentagon that asked for an authoritative judgment from the NIC that resulted in the January 2003 NIC memo that the uranium claim was baseless, another received an earlier warning from the CIA that the evidence on the uranium claim was weak, and another personally rewrote drafts of the State of the Union Address, which was an Address that he spent hours preparing with the same person who had received the CIA's warning that the evidence on the uranium claim was weak.

Regarding the other members of the conspiracy, one was in charge at the White House for producing papers that supported the claim that Iraq had weapons of mass destruction and pursuant to the instruction of his boss, who was another member of the conspiracy, he told the press about a document that supported the uranium claim that President Bush had made. They did this even though their office had issued a memorandum stating that prior to the publication of that supporting document the CIA had expressed serious concerns about the credibility of the uranium claim, and even though after the publication of that supporting document the NIC, which had published the document, issued a memo stating that the uranium claim was baseless.

There is also the circumstantial evidence of their other 232 misleading public statements as noted in *Iraq on the Record*. President Bush made fifty-five misleading statements, Vice President Cheney made fifty-one misleading statements, Secretary Rumsfeld made fifty-two misleading statements, Secretary Powell made fifty misleading statements, and National Security Advisor Rice made twenty-nine misleading statements concerning the threat posed by Iraq for a total of 237 misleading statements.⁴⁰⁰

Also the report *Iraq: The Wild Card, Orchestrated Deception on the Path to War* by The Center for Public Integrity contains an even broader review and reveals that President Bush, Vice President Cheney, National Security Adviser Rice, Secretary Rumsfeld, Secretary Powell, and other Administration officials made 935 false statements that Iraq was a threat to national security.⁴⁰¹ That report makes the conclusion that said “*statements were part of an orchestrated campaign that effectively galvanized public opinion and, in the process, led the nation to war under decidedly false pretenses.*”⁴⁰²

As noted earlier, evidence of other crimes, wrongs, or acts may be admissible at a trial to prove “intent, preparation, *plan*, knowledge, ... or absence of mistake or accident.”⁴⁰³

There is also the circumstantial evidence of the Downing Street Minutes of July 2002, which state that “the intelligence and facts were being fixed around the policy.”⁴⁰⁴

Thus there is overwhelming direct and circumstantial evidence that President Bush, Vice President Cheney, Secretary Rumsfeld, Secretary Powell, National Security Advisor Rice, and Vice President Cheney’s Chief of Staff Libby conspired to defraud Congress and thereby

⁴⁰⁰ *Iraq on the Record*, *supra* note 1, at pp. 25-29.

⁴⁰¹ Lewis and Reading-Smith, *Iraq: The Wild Card, Orchestrated Deception on the Path to War*, *supra* note 283, Overview, False Pretenses, at paras. 1-2 (p. 1 if printed).

⁴⁰² *Id.* at para. 1 (p. 1 if printed) (emphasis added).

⁴⁰³ Fed. R. Evid. 404(b) (emphasis added).

⁴⁰⁴ *The Constitution in Crisis*, *supra* note 57, at p. 27.

violated 18 U.S.C. § 371. That evidence surpasses the probable cause standard for an indictment. At the end of this report is a draft of an indictment that in Count Three sets forth said offenses.⁴⁰⁵

IV. CONCLUSION

An analysis of the public record, including Congressional investigative reports and documents, reveals that President Bush made false and fraudulent statements to Congress in violation of 18 U.S.C. § 1001, and that he, Vice President Cheney, Secretary Rumsfeld, Secretary Powell, National Security Advisor Rice, and Vice President Cheney's Chief of Staff Libby conspired to defraud Congress in violation of 18 U.S.C. § 371.

That existing record is not only strong enough to warrant a grand jury investigation but is strong enough to start a trial tomorrow morning. The documents, reports and other matters mentioned in this report would constitute an exhibit list, and the names would constitute the witness list.

Therefore, I am bringing these matters to your "attention" and request that the Justice Department appoint an outside Special Counsel to investigate the above matters pursuant to 28 C.F.R. §§ 600.1-.3.

The Justice Department's refusal to appoint a Special Counsel in this matter would provide grounds for further Congressional hearings on selective prosecution and the Department's politicization, and also would provide further grounds for the application of the doctrines of equitable tolling and equitable estoppel if and when charges are filed after President Bush leaves office.

Thank you for your consideration of this matter.

⁴⁰⁵ See *infra* pp. 99-103.

Respectfully submitted,

Francis T. Mandanici

DRAFT OF INDICTMENT

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA : CRIMINAL NO.

VS. : VIOLATIONS: 18 U.S.C. § 1001
(FALSE AND FRAUDULENT
STATEMENTS TO UNITED STATES
CONGRESS)

GEORGE W. BUSH, : 18 U.S.C. § 371
RICHARD CHENEY, (DEFRAUDING UNITED STATES
CONDOLLEEZZA RICE, CONGRESS)
COLIN POWELL,
DONALD RUMSFELD,
I. LEWIS LIBBY
Defendants

INDICTMENT

The Grand Jury Charges:

COUNT ONE

(False And Fraudulent Statement To Congress By GEORGE W. BUSH)

1. The War Powers Resolution of 1973, 50 U.S.C. §§ 1541-1548, states in § 1544(b) that the President of the United States cannot engage the United States Armed Forces in hostilities for more than ninety days without a declaration of war or specific statutory authorization for such use of the United States Armed Forces, and in § 1544(c) states that at any time that United States Armed Forces are engaged in hostilities outside the United States without a declaration of war or specific statutory authorization for such use of the United States Armed Forces, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

2. The Authorization for Use of Military Force Against Iraq Resolution of 2002, Public Law 107-243, 116 Stat. 1498 (the war resolution), in § 3(a) authorized the President of the United States “to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to - (1) defend the national security of the United States against the continuing threat posed by Iraq; and (2) enforce all relevant United Nations Security Council resolutions regarding Iraq”; and said war resolution is still in effect.

3. The United Nations Security Council on November 8, 2002 passed Resolution 1441 (S.C. Res. 1441), which in ¶ 3 demanded that Iraq provide to the Security Council and other United Nations entities a “currently accurate, full, and complete declaration of all aspects of its programmes to develop chemical, biological, and nuclear weapons” including the “precise locations of such weapons ... and related material”, and in ¶ 7 authorized an enhanced weapons inspections regimen in Iraq that gave United Nations weapons inspectors unrestricted access to any sites and buildings as well as the right to “remove, destroy, or render harmless all ... [such] weapons, ... materials, and other related items.”

4. Iraq then agreed to S.C. Res. 1441, and on or about November 27, 2002 Iraq allowed United Nations weapons inspectors to enter Iraq, and then on December 7, 2002 Iraq provided a declaration to the United Nations in response to S.C. Res. 1441.

5. The United Nations weapons inspectors did not find any evidence that Iraq had revived its nuclear weapons program, did not find any prohibited nuclear activities, and did not find any evidence that Iraq had sought uranium in recent years.

6. Prior to the war in Iraq that the defendant GEORGE W. BUSH as the President of the United States initiated on or about March 19, 2003 pursuant to the said war resolution, BUSH as President on or about January 20, 2003 in the District of Columbia submitted to the Congress of

the United States a document entitled *Communication from the President of the United States Transmitting a Report on Matters Relevant to the Authorization for Use of Military Force Against Iraq Resolution of 2002, Public Law 107-243* (war resolution report), which was subsequently labeled House Document 108-23.

7. Said war resolution report was within the jurisdiction of the legislative branch of the Government of the United States (the Congress of the United States) since Section 4 of Public Law 107-243 (the war resolution) that had authorized BUSH as President to use military force in Iraq also required BUSH as President to submit said war resolution report to Congress, and furthermore said war resolution report was submitted to Congress for a review conducted by a committee of Congress pursuant to its authority.

8. In said war resolution report, in referring to the December 7, 2002 declaration that Iraq issued to the United Nations that was supposed to disclose all aspects of Iraq's programs to develop nuclear weapons, BUSH knowingly and willfully made the materially false, fictitious, and fraudulent statement that the declaration by Iraq "failed to deal with issues which have arisen since 1998, including ... attempts to acquire uranium and the means to enrich it."

9. Said statement was a false and fictitious statement because Iraq had made no such attempts to acquire uranium and also thus did not fail to include such attempts in said report, and BUSH made said statement knowing that it was false and fictitious, which would include making said statement with a reckless disregard of whether it was true and with a purpose to avoid learning the truth, or deliberately blinding himself to what would have been otherwise obvious.

10. Said statement was not only a false and fictitious statement but also was a fraudulent statement in that BUSH knew but failed to disclose in said statement that members of the American Intelligence Community had issued warnings that discredited the claim that Iraq had

attempted to acquire uranium, such as the warnings that the uranium claim was highly dubious, baseless, and that BUSH should not make the claim because it was weak; and BUSH made said statement to deceive Members of Congress into believing that even though United Nations weapons inspectors might not have found in Iraq any nuclear weapons nor evidence that Iraq had revived its nuclear weapons program, Iraq did in fact have such weapons and such a program since it had secretly sought the fuel for a nuclear weapon, and thus Congress should not repeal or modify the war resolution since the grounds for the war resolution were still valid in that Iraq was still a threat to the national security of the United States and had not complied with United Nations Security Council resolutions that required it to disclose its nuclear weapons and all aspects of its programs to develop nuclear weapons.

11. Said statement was a materially false, fictitious and fraudulent statement because it was capable of deceiving Members of Congress into believing that, as mentioned above, the grounds for the war resolution were still valid and thus Congress should not repeal or modify the war resolution.

12. BUSH despite his knowledge that the said statement was false, fictitious, and fraudulent still knowingly and willfully made the said statement in his war resolution report to Congress.

In violation of 18 U.S.C. § 1001(a)(2).

COUNT TWO

(False And Fraudulent Statement To Congress By GEORGE W. BUSH)

1-5. The grand jury realleges Paragraphs 1-5 of Count One as though fully set forth herein.

6. Prior to the war in Iraq that the defendant GEORGE W. BUSH as the President of the United States initiated on or about March 19, 2003 pursuant to the said war resolution, BUSH as President on or about January 28, 2003 in the District of Columbia submitted to the Congress of the United States a document entitled *Message from the President of the United States Transmitting a Report on the State of the Union* (State of the Union report), which was subsequently labeled House Document 108-1.

7. Said State of the Union report was within the jurisdiction of the legislative branch of the Government of the United States (the Congress of the United States) since Article II, § 3 of the United States Constitution required BUSH as President to submit said State of the Union report to Congress, and furthermore said State of the Union report was submitted to Congress for a review conducted by a committee of Congress pursuant to its authority.

8. In said State of the Union report,

(a) BUSH knowingly and willfully made the materially false, fictitious, and fraudulent statement that “[t]he British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.”

(b) Referring to S.C. 1441 and Iraq’s December 7, 2002 declaration to the United Nations that was supposed to disclose all aspects of Iraq’s programs to develop nuclear weapons, BUSH knowingly and willfully made the materially false, fictitious, and fraudulent statements that “Hussein has not credibly explained” said seeking of uranium in said declaration and that Hussein “has much to hide” from United Nations weapons inspectors, again referring to Hussein’s seeking of uranium.

9. Said statement about Hussein seeking uranium was a false and fictitious statement because Hussein had not recently sought significant quantities of uranium from Africa and thus

the British government never actually learned (discovered) that he did; said statement was also false and fictitious because the British government never even alleged that any such seeking of uranium was recent; said statements about Hussein not credibly explaining and hiding the seeking of uranium were false and fictitious statements because Hussein had not sought the uranium; and BUSH made said statements knowing that they were false and fictitious, which would include making said statements with a reckless disregard of whether they were true and with a purpose to avoid learning the truth, or deliberately blinding himself to what would have been otherwise obvious.

10. Said statements were not only false and fictitious statements but also were fraudulent statements in that BUSH knew but failed to disclose in said statements that members of the American Intelligence Community had issued warnings that discredited the claim that Iraq had sought uranium, such as the warnings that the uranium claim was highly dubious, baseless, and that BUSH should not make the claim because it was weak; and BUSH made said statements to deceive Members of Congress into believing that even though United Nations weapons inspectors might not have found in Iraq any nuclear weapons nor evidence that Iraq had revived its nuclear weapons program, Iraq did in fact have such weapons and such a program since it had secretly sought the fuel for a nuclear weapon, and thus Congress should not repeal or modify the war resolution since the grounds for the war resolution were still valid in that Iraq was still a threat to the national security of the United States and had not complied with United Nations Security Council resolutions that required it to disclose its nuclear weapons and all aspects of its programs to develop nuclear weapons.

11. Said statements were materially false, fictitious and fraudulent statements because they were capable of deceiving Members of Congress into believing that, as mentioned above,

the grounds for the war resolution were still valid and thus Congress should not repeal or modify the war resolution.

12. BUSH despite his knowledge that the said statements were false, fictitious, and fraudulent still knowingly and willfully made the said statements in his State of the Union report to Congress.

In violation of 18 U.S.C. § 1001(a)(2).

COUNT THREE

(Conspiracy To Defraud Congress By GEORGE W. BUSH, RICHARD CHENEY, CONDOLEEZZA RICE, COLIN POWELL, DONALD RUMSFELD, I. LEWIS LIBBY)

1-5. The grand jury realleges Paragraphs 1-5 of Count One as though fully set forth herein.

6. Prior to the war in Iraq that the defendant GEORGE W. BUSH as the President of the United States initiated on or about March 19, 2003 pursuant to the said war resolution, BUSH while President of the United States and various co conspirators, including the defendant RICHARD CHENEY (the then and current Vice President of the United States), the defendant CONDOLEEZZA RICE (the then National Security Advisor and current Secretary of State), the defendant COLIN POWELL (the then Secretary of State), the defendant DONALD RUMSFELD (the then Secretary of Defense), and the defendant I. LEWIS LIBBY (the then Chief of Staff to Vice President CHENEY), on or about January 2003 in the District of Columbia entered into an agreement that had the purpose and objective of defrauding the United States by impairing, obstructing, and interfering with the lawful functions of Congress to consider legislation that would repeal or modify the said war resolution that had given BUSH as President the power to engage the Armed Forces of the United States in a war against Iraq.

7. Said agreement included using deceitful and dishonest means, such as the deceitful and dishonest means of making, or instructing others to make, false and or fraudulent public statements which said or in effect said that Iraq had sought the uranium fuel for a nuclear bomb and or which said or in effect said that Iraq had not disclosed that fact to the United Nations as required by S.C. Res. 1441, and such as the deceitful and dishonest means of not disclosing nor instructing others to disclose the warnings discrediting the uranium claim issued by members of the American Intelligence Community; and the purpose and objective of said statements was to impair, obstruct, and interfere with any effort by Congress to repeal or modify the war resolution and to deceive Congress into believing that the grounds for the war resolution were still and or had been valid in that Iraq was a threat to the national security of the United States and had not complied with United Nations Security Council resolutions that required it to disclose its nuclear weapons and all aspects of its programs to develop nuclear weapons.

8. The co conspirators committed overt acts in furtherance of said conspiracy and said acts included the following:

(a) President BUSH on January 20, 2003 in his war resolution report to Congress entitled *Communication from the President of the United States Transmitting a Report on Matters Relevant to the Authorization for Use of Military Force Against Iraq Resolution of 2002, Public Law 107-243* (subsequently labeled House Document 108-23) stated that Iraq's December 7, 2002 disclosure to the United Nations (which was supposed to disclose all aspects of Iraq's programs to develop nuclear weapons) "failed to deal with issues which have arisen since 1998, including ... attempts to acquire uranium and the means to enrich it."

(b) President BUSH on January 28, 2003 in his State of the Union report to Congress entitled *Message from the President of the United States Transmitting a Report on the State of*

the Union (subsequently labeled House Document 108-1) stated that “[t]he British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa”; and referring to S.C. 1441 and Iraq’s December 7, 2002 declaration to the United Nations that was supposed to disclose all aspects of Iraq’s programs to develop nuclear weapons, BUSH stated that “Hussein has not credibly explained” said seeking of uranium in said declaration and that Hussein “has much to hide” from United Nations weapons inspectors, again referring to Hussein’s seeking of uranium.

(c) The then National Security Advisor RICE on January 23, 2003 in an op-ed article in *The New York Times* entitled *Why We Know Iraq Is Lying* stated that Iraq’s disclosure to the United Nations (which was supposed to disclose all aspects of Iraq’s programs to develop nuclear weapons) “fails to account for or explain Iraq’s efforts to get uranium from abroad.”

(d) The then Secretary of State POWELL on January 26, 2003 in a speech at the World Economic Forum stated: “Why is Iraq still trying to procure uranium and the special equipment needed to transform it into material for nuclear weapons?”

(e) The then Secretary of Defense RUMSFELD on January 29, 2003 at a press conference stated: “[Hussein’s] regime has the design for a nuclear weapon; it was working on several different methods of enriching uranium, and recently was discovered seeking significant quantities of uranium from Africa.”

(f) LIBBY, who was the then Chief of Staff to Vice President CHENEY, was in charge at the White House for producing papers that supported the claim that Iraq had weapons of mass destruction and Vice President CHENEY on or about July 7, 2003 communicated to LIBBY that he thought that it was very important that the section of the October 2002 National Intelligence Estimate (NIE) stating that Iraq had vigorously tried to procure uranium become known publicly

in order to support the uranium claim that President BUSH had made in his State of the Union report, and CHENEY instructed LIBBY to tell a reporter, Judy Miller, that the NIE stated that Iraq had vigorously tried to procure uranium, and thus LIBBY on July 8, 2003 met with Miller and told her that the NIE stated that Iraq had vigorously tried to procure uranium; and furthermore CHENEY on or about July 12, 2003 instructed LIBBY to again tell the press that the NIE stated that Iraq had tried to procure uranium, and thus LIBBY on July 12, 2003 told four reporters, including Miller, that the NIE stated that Iraq had tried to procure uranium.

9. Said statement of BUSH that the “British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa” was a false statement not only because Hussein had not recently sought significant quantities of uranium from Africa and thus the British government never actually learned (discovered) that he did, but was also false because the British government never even alleged that any such seeking of uranium was recent, and BUSH made said statement knowing that it was false.

10. All said statements of BUSH, RICE, POWELL, and RUMSFELD, about Iraq or Hussein attempting to acquire, seeking, making efforts to get, and trying to procure uranium, and said statements about Iraq and Hussein not credibly explaining such acts to the United Nations or hiding such acts from the United Nations, were false because Iraq and Hussein had made no such attempts or efforts to acquire uranium, and also thus did not fail to credibly explain such matters to the United Nations nor hide such matters from the United Nations, and BUSH, RICE, POWELL, and RUMSFELD made said statements knowing that said statements were false.

11. All said statements of BUSH, RICE, POWELL, and RUMSFELD, about Iraq or Hussein attempting to acquire, seeking, making efforts to get, and trying to procure uranium, and said statements about Iraq and Hussein not credibly explaining such acts to the United Nations or

hiding such acts from the United Nations, were also fraudulent statements because they knew but failed to disclose in said statements that members of the American Intelligence Community had issued warnings that discredited such uranium claims, such as the warnings that such claims were highly dubious, baseless, and that President BUSH should not make the claim because it was weak.

12. Said statements that Vice President CHENEY in July 2003 instructed his Chief of Staff LIBBY to make to the press about Iraq trying to procure uranium as mentioned in the October 2002 NIE, and which LIBBY did make to the press, were fraudulent statements because CHENEY and LIBBY knew but did not disclose in said statements that the NIE also contained a dissenting opinion stating that the uranium claim was highly dubious, did not disclose that the agency that published the October 2002 NIE later in January 2003 issued a memo to the White House stating that that the uranium claim was baseless, did not disclose that the said agency that published the NIE issued another memorandum in April 2003 stating that it was highly unlikely that Niger sold uranium to Iraq in recent years, did not disclose that the Vice President's Office had produced a memorandum for Vice President CHENEY dated June 9, 2003 that noted that prior to the publication of the NIE the CIA had expressed serious concerns about the credibility of the reporting on the uranium claim, and did not disclose that members of the American Intelligence Community had issued other warnings that discredited the uranium claim, such as the warning that President BUSH should not make the claim because it was weak.

In violation of 18 U.S.C. § 371.

A True Bill

United States Attorney

Foreperson

URL ADDRESSES

The following are the URL addresses for the matters in the corresponding footnotes. Books such as *The One Percent Doctrine* (footnote 143), and *Plan of Attack* (footnote 173) do not have URL addresses.

1. House Committee on Government Reform Minority (Democratic) Staff, 108th Cong., *Iraq on the Record*, available at <http://oversight.house.gov/IraqOnTheRecord/> (at the end of the second paragraph click on *Iraq on the Record Report*).
4. Iraq War Res. of 2002, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ243.107.pdf.
7. Patrick Leahy, *Opening Statement of Senator Patrick Leahy* (July 11, 2007), available at http://judiciary.senate.gov/member_statement.cfm?id=2835&wit_id=2629.
United States Senate Committee on the Judiciary, *Notice of Committee Hearing*, regarding hearing on July 11, 2007 entitled *Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys? – Part VI*, available at <http://judiciary.senate.gov/hearing.cfm?id=2835>.
Patrick Leahy, *Statement of Chairman Patrick Leahy* (July 24, 2007), available at http://judiciary.senate.gov/member_statement.cfm?id=2842&wit_id=2629.
United States Senate Committee on the Judiciary, *Notice of Committee Hearing*, regarding hearing on July 24, 2007 entitled *Oversight of the U.S. Department of Justice*, available at <http://judiciary.senate.gov/hearing.cfm?id=2842>.
John Conyers, Jr., *Statement of Chairman John Conyers Jr. Committee on the Judiciary Hearing on DOJ Authorization/Oversight (Attorney General Gonzales)*, available at <http://judiciary.house.gov/Oversight.aspx?ID=316> (click on Chairman's Opening Statement).
United States House of Representatives Committee on the Judiciary, *Hearing Information*, regarding hearing on May 10, 2007 entitled *Oversight Hearing on the United States Department of Justice*, available at <http://judiciary.house.gov/Oversight.aspx?ID=316>.
United States House of Representatives Committee on the Judiciary, *Hearing Information*, regarding hearing on October 23, 2007 entitled *Joint Hearing on Allegations of Selective Prosecution: The Erosion of Public Confidence in Our Federal Justice System*, available at <http://judiciary.house.gov/Oversight.aspx?ID=386>.
Video of Joint Hearing of House Judiciary Committee on October 23, 2007 entitled *Joint Hearing on Allegations of Selective Prosecution: The Erosion of Public Confidence in Our Federal Justice System*, available at <http://judiciary.house.gov/Oversight.aspx?ID=386> (click on video webcast).
Donald C. Shields, Ph.D., *An Empirical Examination of the Political Profiling of Elected Officials: A Report on Selective Investigations and/or Indictments by the DOJ's U.S. Attorneys under Attorneys General Ashcroft and Gonzales*, available at <http://judiciary.house.gov/Oversight.aspx?ID=386> (on the right under Witness List click on Donald C. Shields, Ph.D).
8. Letter from Congressman Maurice Hinchey to Patrick Fitzgerald; said letter minus footnotes available at http://www.house.gov/hinchey/newsroom/press_2005/091505fitzgeraldletter.html.
11. Letter from Congressman Jerrold Nadler to Acting Deputy Attorney General Robert D. McCallum, Jr., available at http://www.house.gov/list/press/ny08_nadler/FitzgeraldwarMemo102005.html.
14. Letter from Patrick J. Fitzgerald to The Honorable Maurice D. Hinchey, available at <http://www.house.gov/hinchey/FitzgeraldResponseToHinchey.pdf>.
Letter from Patrick J. Fitzgerald to the Honorable Henry A. Waxman, available at <http://oversight.house.gov/documents/20070314180406-55978.pdf>.
21. House Committee on Government Reform Minority (Democratic) Staff, 108th Cong., *Iraq on the Record Database*, available at <http://oversight.house.gov/IraqOnTheRecord/> (follow to the Database on the left). To retrieve

from that database all the uranium statements of which there are fifteen including the five statements about Iraq seeking uranium, go to the above URL address, in the left column at Speaker choose All, at Keyword type the word uranium, at Subject choose Nuclear Capabilities, click on Find Statements, and at the top click on Show All. That portion of the database containing the uranium claims is referred to as the *Iraq on the Record Uranium Database*.

22. Bush, *War Resolution Report*, available at <http://www.gpoaccess.gov/serialset/cdocuments/search.html> (under Select a Congress, select 108th Congress only and deselect others, under Choose a document choose House Documents, at Search enter “108-23”, click on Submit, go to #3, H.Doc.108-23 *Report on Matters Relevant to the Authorization for Use of Military*, and click on PDF).

25. Bush, *State of the Union Report*, available at <http://www.gpoaccess.gov/serialset/cdocuments/search.html> (under Select a Congress, select 108th Congress only and deselect others, under Choose a document choose House Documents, at Search enter “108-1”, click on Submit, go to #4, H.Doc.108-1 *State of the Union Message*, and click on PDF).

29. Condoleezza Rice, *Why We Know Iraq Is Lying*, Op-Ed, New York Times, available at <http://www.whitehouse.gov/news/releases/2003/01/20030123-1.html> .

30. Colin Powell, *Remarks at the World Economic Forum*, World Economic Forum, available at <http://www.state.gov/secretary/former/powell/remarks/2003/16869.htm> .

31. Donald Rumsfeld, United States Department of Defense, News Transcript, *DoD News Briefing – Secretary Rumsfeld and Gen. Myers*, available at <http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=1349> (at the end click on Printer-friendly Version).

32. Paul Wolfowitz, *Iraq: What Does Disarmament Look Like?*, Council on Foreign Relations, available at <http://www.defenselink.mil/speeches/speech.aspx?speechid=170> (at the end click on Printer-friendly Version).

The White House, *What Does Disarmament Look Like?*, available at <http://www.whitehouse.gov/infocus/iraq/disarmament/disarmament.pdf> .

Konracke Falsely Asserted Niger Claim “was never one of the major arguments” for War, Wilson’s Report “was never accepted by anybody”, Media Matters For America, available at <http://mediamatters.org/items/printable/200510190001> .

33. *Indictment*, United States v. Libby, available at http://www.usdoj.gov/usao/iln/osc/documents/libby_indictment_28102005.pdf .

34. Defense Exhibit 421, *Message by Craig Schmall to CIA Employees*, available at <http://wid.ap.org/documents/libbytrial/jan24/DX421.pdf> .

35. *Libby Trans. #1*, available at <http://www.usdoj.gov/usao/iln/osc/exhibits/0207/GX1.pdf> .

38. Defense Exhibit 707B, Joseph C. Wilson 4th, *What I Didn’t Find in Africa*, Op-Ed, New York Times, available at <http://wid.ap.org/documents/libbytrial/jan25/DX707B.pdf> .

39. *Government’s Response to Defendant’s Third Motion to Compel Discovery*, available at http://www.usdoj.gov/usao/iln/osc/documents/2006_04_06_governments_response_to_third_motion_to_compel.pdf

40. *Libby Trans. #2*, available at <http://www.usdoj.gov/usao/iln/osc/exhibits/0207/GX2.pdf> .

49. The White House, Press Release, *President Bush Discusses Global War on Terror*, available at <http://www.whitehouse.gov/news/releases/2006/04/print/20060410-1.html> .

53. Carol Leonnig & Amy Goldstein, *Libby Found Guilty in CIA Leak Case*, Wash. Post, available at http://www.washingtonpost.com/wp-dyn/content/article/2007/03/06/AR2007030600648_pf.html .

Carol Leonnig & Amy Goldstein, *Libby Given 21/2-Year Prison Term*, Wash. Post, available at http://www.washingtonpost.com/wp-dyn/content/article/2007/06/05/AR2007060500150_pf.html .

Amy Goldstein, *Bush Commutes Libby's Prison Sentence*, Wash. Post, available at http://www.washingtonpost.com/wp-dyn/content/article/2007/07/02/AR2007070200825_pf.html .

57. House Judiciary Committee Minority (Democratic) Staff, 109th Cong., *The Constitution in Crisis* (Final Investigative Report, August, 2006), available at <http://judiciary.house.gov/Media/PDFS/DowningReport060804.pdf>

Barton Gellman, *A Leak, Then a Deluge, Did a Bush Loyalist, Trying to Protect the Case for War in Iraq, Obstruct an Investigation into Who Blew the Cover of a Covert CIA Operative?*, Wash. Post, available at http://www.washingtonpost.com/wp-dyn/content/article/2005/10/29/AR2005102901478_pf.html .

59. Paul Wolfowitz, U.S. Department of Defense, News Transcript, *Deputy Secretary Wolfowitz Interview with Sam Tannenhaus, Vanity Fair*, available at <http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=2594> (at the end click on Printer-friendly Version).

60. *Senate Intelligence Committee Report*, available at <http://www.gpoaccess.gov/serialset/creports/iraq.html> .

77. Joint Intelligence Committee, *Iraq's Weapons of Mass Destruction, The Assessment of the British Government*, available at <http://www.number-10.gov.uk/files/pdf/iraqdossier.pdf> .

Prime Minister Tony Blair, *Prime Minister's Iraq Statement to Parliament*, available at <http://www.number-10.gov.uk/output/Page1727.asp> .

The Lord Butler, *Review of Intelligence on Weapons of Mass Destruction*, available at <http://www.butlerreview.org.uk/report/> (click on Download area 2, PDF report).

78. George J. Tenet, *Statement by George J. Tenet, Director of Central Intelligence*, available at <https://www.cia.gov/news-information/press-releases-statements/press-release-archive-2003/pr07112003.html> .

98. David E. Sanger and Julia Preston, *Threats and Responses: Report by Iraq; Iraq Arms Report Has Big Omissions, U.S. Officials Say*, New York Times, available at <http://query.nytimes.com/gst/fullpage.html?res=9A02E0D7103AF930A25751C1A9649C8B63> .

114. The White House, *National Security Council*, available at <http://www.whitehouse.gov/nsc/> .

120. *Presidential Commission Report*, available at http://www.wmd.gov/wmd_report.pdf .

124. Defense Exhibit 64, *Letter and Paper from Stanley M. Moskowitz to Tim Sample*, available at <http://wid.ap.org/documents/libbytrial/jan24/DX64.pdf> .

125. Government Exhibit 2A, *Memorandum for the Vice President from: John Hannah*, available at <http://www.usdoj.gov/usao/iln/osc/exhibits/0207/GX2A.pdf> (note that this trial exhibit contains several exhibits submitted to the grand jury on Mar. 24, 2004 including the *Memorandum for the Vice President from: John Hannah* dated June 9, 2003, and that memorandum is the first of said grand jury exhibits, and is on PDF page 3).

132. Barton Gellman & Dafna Linzer, *A 'Concerted Effort' to Discredit Bush Critic*, Wash. Post, available at http://www.washingtonpost.com/wp-dyn/content/article/2006/04/08/AR2006040800916_pf.html .

134. Robert Scheer, *Now Powell Tells Us*, The Nation, available at <http://www.thenation.com/doc/20060424/scheer0411> .

138. The White House, *State of the Union: Behind the Scenes* (2003), available at <http://www.whitehouse.gov/stateoftheunion/preparation/peindex.html> (click on various pictures for wording under pictures).

146. The White House, Press Release, *Press Briefing on Iraq WMD and SOTU Speech*, available at <http://www.whitehouse.gov/news/releases/2003/07/print/20030722-12.html> .

150. *Iraq Survey Group Report*, available at https://www.cia.gov/library/reports/general-reports-1/iraq_wmd_2004/index.html (follow to the bottom for links to

the PDF editions of the different volumes).

154. Senate Select Committee On Intelligence, 109th Cong., *Report of the Select Committee on Intelligence on Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments*, available at <http://www.intelligence.senate.gov/phaseiaccuracy.pdf> .

174. Barton Gellman & Walter Pincus, *Depiction of Threat Outgrew Supporting Evidence*, Wash. Post, available at <http://www.washingtonpost.com/ac2/wp-dyn/A39500-2003Aug9?language=printer> .

191. Security Council Resolution 1441 (S.C. Res. 1441), available at [http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1441\(2002\)](http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1441(2002)) (click on English) (note: the link includes the last parenthesis mark).

195. UN News Centre, Press Release, *Iraq, in Letter to UN, Accepts New Security Council Resolution on Weapons Inspections*, available at <http://www.un.org/apps/news/storyAr.asp?NewsID=5344&Cr=iraq&Cr1> .

196. UN News Centre, Press Release, *Resuming Weapons Inspections in Iraq, UN Teams Visit 3 Sites Outside Baghdad*, available at <http://www.un.org/apps/news/storyAr.asp?NewsID=5488&Cr=iraq&Cr1=inspect> .

197. UN News Centre, Press Release, *Iraq Hands over Declaration to UN*, available at <http://www.un.org/apps/news/storyAr.asp?NewsID=5583&Cr=Iraq&Cr1> .

201. H. Con. Res. 2, 108th Cong., available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d108:2:./list/bss/d108HC.lst::TOM:/bss/108search.html> (click on Text of Legislation).

206. Letter from 130 Members of Congress to President George W. Bush, available at http://www.house.gov/kind/issues_pdf/iraq_UNweaponsInspectors.pdf , and if that link is not available go to http://www.house.gov/schakowsky/press/pr01_24_2003iraqletter.shtml .

208. Security Council, Press Release, *Security Council Briefed by Chief UN Weapons Experts on First 60 Days of Inspections in Iraq*, available at <http://www.un.org/News/Press/docs/2003/sc7644.doc> .

210. International Atomic Energy Agency (IAEA), *The Status of Nuclear Inspections in Iraq*, available at <http://www.un.org/News/dh/iraq/elbaradei27jan03.htm> .

228. S. Res. 28, 108th Cong., available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d108:28:./list/bss/d108SE.lst::TOM:/bss/108search.html> (click on Text of Legislation) .

232. S. Res. 32, 108th Cong., available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d108:32:./list/bss/d108SE.lst::TOM:/bss/108search.html> (click on Text of Legislation).

234. H. Res. 55, 108th Cong., available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d108:55:./list/bss/d108HE.lst::TOM:/bss/108search.html> (click on Text of Legislation).

237. H. J. Res. 20, 108th Cong., available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d108:20:./list/bss/d108HJ.lst::TOM:/bss/108search.html> (click on Text of Legislation).

238. Security Council, Press Release, *Iraq Cooperating with Disarmament Procedures, But Many Banned Weapons Remain Unaccounted for, Inspectors Tell Security Council*, available at <http://www.un.org/News/Press/docs/2003/sc7664.doc> .

241. Draft Security Council Resolution 215 (Mar. 7, 2003), available at <http://www.un.org/News/dh/iraq/res-iraq-07mar03-en-rev.pdf> .
244. UN News Centre, Press Release, *IAEA Sees Progress in Identifying Iraq's Nuclear Capabilities, Security Council Told*, available at <http://www.un.org/apps/news/storyAr.asp?NewsID=6380&Cr=iraq&Cr1=inspect> .
International Atomic Energy Agency (IAEA), *The Status of Nuclear Inspections in Iraq: An Update*, available at <http://www.un.org/News/dh/iraq/elbaradei-7mar03.pdf> .
UN News Centre, Press Release, *Blix Welcomes Accelerated Cooperation by Iraq, But Says Unresolved Issues Remain*, available at <http://www.un.org/apps/news/storyAr.asp?NewsID=6383&Cr=iraq&Cr1=inspect> .
246. UN News Centre, Press Release, *Several Security Council Members Call for More Inspections in Iraq*, available at <http://www.un.org/apps/news/storyAr.asp?NewsID=6387&Cr=iraq&Cr1=inspect> .
247. Felicity Barringer, *Threats and Responses: United Nations; U.N. Split Widens as Allies Dismiss Deadline on Iraq*, New York Times, available at <http://query.nytimes.com/gst/fullpage.html?res=9B07E7DC1E3FF93BA35750C0A9659C8B63> .
248. Joby Warrick, *Some Evidence on Iraq Called Fake, U.N. Nuclear Inspector Says Documents on Purchases Were Forged*, Wash. Post, the headline is available at <http://www.washingtonpost.com/ac2/wp-dyn/A59403-2003Mar7?language=printer> .
249. Patrick E. Tyler and Felicity Barringer, *Threats and Responses: United Nations; Annan Says U.S. Will Violate Charter if It Acts Without Approval*, New York Times, available at <http://query.nytimes.com/gst/fullpage.html?res=9806E7DE143EF932A25750C0A9659C8B63> .
250. UN News Centre, Press Release, *Security Council Begins Hearing from over 40 Non-Members on Disarming Iraq*, available at <http://www.un.org/apps/news/storyAr.asp?NewsID=6421&Cr=iraq&Cr1=inspect> .
UN News Centre, Press Release, *Security Council Hears Call for More Time for Iraq Weapons Inspections*, available at <http://www.un.org/apps/news/storyAr.asp?NewsID=6436&Cr=iraq&Cr1=inspect> .
251. H. Res. 141, 108th Cong., available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d108:141:/list/bss/d108HE.lst::TOM:/bss/108search.html> (click on Text of Legislation).
256. Letter from Congressman Henry A. Waxman to The President (George W. Bush), available at <http://oversight.house.gov/story.asp?ID=346&year=2003> (follow to Documents and Links, click on Letter to the President).
263. UN News Centre, Press Release, *UK, US and Spain Won't Seek Vote on Draft Resolution, May Take 'Own Steps' to Disarm Iraq*, available at <http://www.un.org/apps/news/storyAr.asp?NewsID=6472&Cr=iraq&Cr1=inspect>
265. Walter Pincus and Dana Milbank, *Bush Clings to Dubious Allegations About Iraq*, available at <http://www.washingtonpost.com/ac2/wp-dyn/A42517-2003Mar17?language=printer> .
266. H. Con. Res. 101, 108th Cong., available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d108:101:/list/bss/d108HC.lst::TOM:/bss/108search.html> (click on Text of Legislation).
271. U.N. Monitoring, Verification and Inspection Commission, *Thirteenth Quarterly Report of the Executive Chairman of the United Nations Monitoring, Verification and Inspection Commission in Accordance with Paragraph 12 of Security Council Resolution 1284 (1999)*, U.N. Doc. S/2003/580, available at http://www.un.org/Depts/unmovic/new/documents/quarterly_reports/s-2003-580.pdf .
International Atomic Energy Agency (IAEA), *Fifteenth Consolidated Report of the Director General of the International Atomic Energy Agency under Paragraph 16 of Security Council Resolution 1051 (1996)*, U.N. Doc. S/2003/422, available at http://www.iaea.org/OurWork/SV/Invo/reports/s_2003_422.pdf .

272. H. Res. 260, 108th Cong. (2003), available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d108:260:/list/bss/d108HE.lst::TOM:/bss/108search.html> (click on Text of Legislation).
273. H. Res. 5875, 109th Cong. (2006), available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d109:5875:/list/bss/d109HR.lst::TOM:/bss/109search.html> (click in Text of Legislation).
- H. Res. 413, 110th Cong. (2007), available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d110:413:/list/bss/d110HR.lst::TOM:/bss/110search.html> (click on Text of Legislation).
- H. Res. 2450, 110th Cong. (2007), available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d110:2450:/list/bss/d110HR.lst::TOM:/bss/110search.html> (click on Text of Legislation).
283. Charles Lewis and Mark Reading-Smith, *Iraq: The Wild Card, Orchestrated Deception on the Path to War*, The Center for Public Integrity, Overview, False Pretenses, available at http://www.publicintegrity.org/WarCard/Default.aspx?src=project_home&context=overview&id=945 .
332. Senator Carl Levin, Statement/News Release, *Nomination of Condoleezza Rice to be Secretary of State*, available at <http://www.levin.senate.gov/newsroom/release.cfm?id=230854> .
353. The White House, *State of the Union 2003* (picture of President Bush and Vice President Cheney), available at <http://www.whitehouse.gov/stateoftheunion/chamberessay/04.html> .
- H. Con. Res. 12, 108th Cong., available at <http://thomas.loc.gov/cgi-bin/bdquery/D?d108:12:/list/bss/d108HC.lst::TOM:/bss/108search.html> (click on Text of Legislation).
396. Jake Tapper, *Senate Regrets the Vote to Enter Iraq, ABC News Survey Shows that Knowing Then What It Knows Now, 2002 Senate Would Vote Against Giving President War Powers*, ABC News, available at <http://abcnews.go.com/GMA/print?id=2771519> .
- Iraq Vote: What the Senators Said*, ABC News, available at <http://abcnews.go.com/GMA/print?id=2771576> .

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