To
Attorney General Eric H. Holder, Jr.
Department of Justice
950 Pennsylvania Avenue
Washington, DC 20530

Renewed 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 Its Functions

Submitted by
Francis T. Mandanici
Attorney At Law
180 Pearsall Place
Bridgeport, CT 06605
(203) 368-1775

March 31, 2009

TABLE OF CONTENTS

I. INTRODUCTION

Then Senator Barack Obama last April stated that if elected President he would have his "Attorney General immediately review the information that's already there" regarding whether Bush Administration officials committed any crimes and he stated that "if crimes have been committed, they should be investigated."[1] Senator Obama furthered his point by stating:

> I would want to find out directly from my Attorney General – having pursued, having looked at what's out there right now – are there possibilities of genuine crimes as opposed to really bad policies. And I think it's important – one of the things we've got to figure out in our political culture generally is distinguishing between really dumb policies and policies that rise to the level of criminal activity…. Now, if I found out that there were high officials who knowingly, consciously broke existing laws, engaged in cover-ups of those crimes with knowledge forefront, then I think a basic principle of our Constitution is nobody [is] above the law.

Senator Obama also stated that he did not want an investigation that was a "partisan witch hunt", and that was apparently why he stated that his Attorney General should only "review the information that's already there" and "what's out there right now."

Congressman Jerrold Nadler in January introduced a resolution that stated that the next Attorney General should "appoint an independent counsel to investigate, and, where appropriate, prosecute illegal acts by senior officials of the administration of President George W. Bush."[2]

Since you are the Attorney General that President Obama promised would immediately review "information that's already there" concerning any crimes by Bush Administration officials, I hereby request that you review the information that's already there in the public record as detailed in this report and appoint an outside Special Counsel to prosecute the crimes that the public record shows were committed.

---

[1] Will Bunch, *Obama Would Ask His AG to "Immediately Review" Potential of Crimes in Bush White House*, Philadelphia Daily News, Philly.Com (Apr. 14, 2008).* Matters marked with an * in the footnotes indicate that the URL address for said matters is provided at the end of this report. *See infra* pp. 146-152.

[2] H. Res. 9, 111th Cong. (2009), para. 12, #5.*

That public record reveals that former President Bush and members of his Administration committed crimes by making false and fraudulent statements about the grounds for the war in Iraq. To justify starting the war in Iraq, President Bush and others in his Administration prior to the war knowingly made the false and fraudulent claims that Iraq had sought to acquire the uranium fuel for nuclear weapons. President Bush made two statements directly to Congress about Iraq seeking uranium.[3] Former National Security Advisor Condoleezza Rice, former Secretary of State Colin Powell, and former Secretary of Defense Donald Rumsfeld made similar public statements that they expected would also influence Congress.[4] Former Vice President Richard Cheney was involved in said statements since his office was in charge of producing papers arguing the case that Iraq had weapons of mass destruction, and he directed the campaign to defend President Bush's uranium claim and to discredit the critics of that claim.[5]

The purpose of the uranium claims that the Bush Administration made prior to the war was to scare Congress into believing that Iraq having sought uranium for a nuclear weapon did have such weapons and thus was an imminent threat to our country, and thus Congress should not repeal or modify the Congressional resolution that authorized President Bush to use military force in Iraq.[6] At the time of the uranium statements, there were Congressional efforts to repeal that resolution and delay the start of the war so that United Nations (UN) weapons inspectors, who had so far found no weapons of mass destruction in Iraq, could finish their work.[7]

It was the Bush Administration's uranium claims perhaps more than anything else that scared our nation into starting its first preemptive war. President Bush's former press secretary Scott McClellan in his book described the frightening effect of the uranium claims:

---

3 *See infra* pp. 5-6.
4 *See infra* pp. 6-7.
5 *See infra* pp. 7-12.
6 *See infra* pp. 43-53.
7 *See infra* pp. 46-47.

> [President Bush's uranium claim in his January 28, 2003 State of the Union Address] *remained in the public mind one of the most potent bits of evidence in the administration's case for war. After all, the threat of nuclear attack by Iraq seemed far more frightening to most Americans than the more remote danger of a chemical or biological attack on U.S. soil.* That is why the words of [the then] national security adviser Condoleezza Rice on September 8 [2002] had made headlines: "The problem here is that there will always be some uncertainty about how quickly [Saddam Hussein] can acquire nuclear weapons. *But we don't want the smoking gun to be a mushroom cloud*."[8]

The public record detailed in this report not only shows that said officials made or directed others to make said uranium claims, but also provides the direct and circumstantial evidence that proves that said officials knew that the claims were false and fraudulent.[9]

Under the criminal statute 18 U.S.C. § 1001, it is a felony to make false and fraudulent statements to Congress. Under the criminal statute 18 U.S.C. § 371, it is a felony 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 the UN weapons inspectors finished their inspections.

This present report shows that President Bush when he made his uranium claims to Congress violated 18 U.S.C. § 1001. The evidence in this report, including the circumstantial evidence, also shows that President Bush, Vice President Cheney, Rice, Powell, Rumsfeld and others conspired to deceive Congress into believing that Iraq had sought uranium for an existing nuclear weapon and thus was an imminent threat to the United States, and therefore Congress should not exercise its powers to repeal or modify the war resolution. By such conduct they

---

[8] Scott McClellan, *What Happened: Inside the Bush White House and Washington's Culture of Deception* (New York: Public Affairs, 2008), p. 6 (emphasis added).

[9] Other than books, practically all the matters in the public record that are cited in this report are available on the Internet. When said matters available on the Internet are first cited in a footnote, the mark * indicates that the url address for that matter is available at the end of this report in the URL Addresses section under the first footnote number for said matter. *See infra* pp. 146-152. There are a few pictures, cited in footnotes 134-138, that were available on the website of the Bush White House but are not now available because that website has ended. Those pictures are attached to this report. *See infra* pp. 153-155. There are some other matters that were on the Bush White House website that are now available on other websites and the url addresses for those matters are provided.

violated 18 U.S.C. § 371. At the end of this report is a draft of an indictment against said officials based on their said crimes.[10] These crimes are very specific and there is no need for a broad investigation since the public record already provides the evidence.

Also, although more than five years have passed since the commission of said crimes, the five-year statute of limitations, 18 U.S.C. § 3282(a), should not impede the prosecution of President Bush and other officials since President Bush controlled the Justice Department that consistently shielded him and other officials from prosecution. As noted later the Bush Justice Department refused Congressional requests for an investigation into the Bush Administration's uranium claims and refused this author's requests for the appointment of an outside Special Counsel to investigate those claims.[11] As noted later, the Bush Justice Department practiced selective prosecution and made prosecutorial decisions based on politics.[12] The report by the Justice Department's Office of the Inspector General regarding the firing of nine United States Attorneys reveals the relative ease that the Bush Justice Department fired prosecutors who failed to promote the Republican Party's agenda.[13] If any federal prosecutor decided to investigate President Bush the Bush Justice Department would have surely fired that prosecutor.

Therefore and as more fully explained later, under the doctrine of equitable tolling the statute of limitations was suspended during the years that President Bush was in office and controlled the Justice Department, and also under the doctrine of equitable estoppel President Bush would be prevented from raising the defense of the statute of limitations[14]

Thus I am requesting that you appoint an outside Special Counsel, pursuant to 28 C.F.R. § 600, to investigate the matters as set forth in this report and to prosecute said officials.

---

[10] *See infra* pp. 133-145.
[11] *See infra* pp. 71-75.
[12] *See infra* pp. 76-78.
[13] *See infra* pp. 76-77.
[14] *See infra* pp. 80-95.

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*[15] and it's *Database*[16] that the Minority (Democratic) Staff of the House Committee on Government Reform prepared and issued in 2004. That report and *Database* list the five uranium claims among 237 statements about Iraq that President Bush, Vice President Cheney, Rice, Powell, and 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.[17] 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*

---

[15] House Committee on Government Reform Minority (Democratic) Staff, 108th Cong., *Iraq on the Record* (2004), p. 13.*

[16] 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* p. 146, #16. 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 18, 21, 24, 25, 26.

[17] 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 Document No. 108-23 (Jan. 20, 2003), cover [hereinafter Bush, *War Resolution Report*].*

enrich it."[18] 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.[19]

(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.[20] 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].[21]

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 to 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.[22] 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."[23]

(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

---

[18] *Id.* at pp. 4-5 (emphasis added). *See also Iraq on the Record Uranium Database*, *supra* note 16, at para. 15.

[19] Authorization for Use of Military Force Against Iraq Resolution of 2002, Pub. L. No. 107-243, § 4(a), 116 Stat. 1501 [hereinafter Iraq War Res. of 2002].*

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

[21] *Id.* at p. 8 (emphasis added). *See also Iraq on the Record*, *supra* note 15, at p. 13; *Iraq on the Record Uranium Database*, *supra* note 16, at para. 9.

[22] *See* Bush, *State of the Union Report*, *supra* note 20, at p. 8.

[23] *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*."[24]

(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 a nuclear weapon?*"[25]

(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*."[26]

Other Bush 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*.[27]

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

---

[24] 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 15, at p. 13; *Iraq on the Record Uranium Database*, *supra* note 16, at para. 13.

[25] Colin Powell, *Powell Addresses World Economic Summit*, CNN.com (Jan. 26, 2003), paras. 27, 33 of Powell's speech (pp. 3-4 if printed) (emphasis added).* *See also Iraq on the Record Uranium Database*, *supra* note 16, at para. 11.

[26] 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 15, at p. 13; *Iraq on the Record Uranium Database*, *supra* note 16, at para. 5.

[27] 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 Bush 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 Bush White House, *What Does Disarmament Look Like?*, GlobalSecurity.org (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 United States Attorney Patrick Fitzgerald was assigned to investigate the leak of the name of an agent working for the Central Intelligence Agency (CIA). A grand jury later 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.[28] 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."[29] Schmall was the CIA briefer for Libby and Vice President Cheney.[30]

---

[28] *See Indictment*, 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).*

[29] 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).*

[30] *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 January 2003 State of the Union Address about Iraq seeking uranium from Africa was false.[31] 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.[32] 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*."[33] 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.*"[34]

During Libby's trial Fitzgerald introduced transcripts of the testimony that Libby gave to the grand jury.[35] 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."[36] Fitzgerald made the statement that Wilson's article "was a direct accusation that the *Vice President was*

---

31 *Indictment, supra* note 28, at pp. 3-6.

32 *Id.* at p. 6.

33 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).*

34 *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).*

35 *Libby Trans. #1*, *supra* note 30; 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*].*

36 *Libby Trans. #1, supra* note 30, 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*."[37]

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 had vigorously tried to procure uranium.[38]

---

[37] *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.*

[38] 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 30, 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]."[39]

Libby testified that on July 12, 2003, Vice President Cheney dictated to him certain things that he wanted him to tell the press,[40] 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."[41]

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."[42] 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."[43] 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."[44]

> *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 35, at p. 33.

[39] *Libby Trans. #1, supra* note 30, at p. 19.

[40] *Id.* at pp. 173-174, 177-181.

[41] *Id.* at pp. 177, 179, 181, 182. Under 'deep background', the reporter does not reveal the identity of the source. *Id.* at p. 13.

[42] *Id.* at p. 117.

[43] *Id.* at p. 118.

[44] *Libby Trans. #2, supra* note 35, 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 Bush White House, Press Release, *President Bush Discusses Global War on Terror*, GlobalSecurity.org (Apr. 10, 2006), paras. 68-70 (pp. 6-7 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.[45] 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.[46]

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.[47]

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.[48]

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.[49]

---

[45] *Libby Trans. #1*, *supra* note 30, at pp. 114, 124; *Libby Trans. #2*, *supra* note 35, 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.

[46] *Libby Trans. #2*, *supra* note 35, at p. 35.

[47] *Libby Trans. #1*, *supra* note 30, at pp. 173, 177-193.

[48] *See* Carol D. Leonnig and Amy Goldstein, *Libby Found Guilty in CIA Leak Case*, Wash. Post (Mar. 7, 2007);* Amy Goldstein, *Bush Commutes Libby's Prison Sentence*, Wash. Post (July 3, 2007).*

[49] *See infra* pp. 14-16.

B. Significance of the Bush 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.*"[50] 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.[51]

The House Judiciary Committee Minority (Democratic) Staff issued a report in 2006 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."[52] According to that press report the uranium claim "was the easiest way for the Bush administration to raise alarms."[53]

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*

---

50 *Iraq on the Record*, *supra* note 15, at p. 13 (emphasis added).

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

52 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.*)

53 *The Constitution in Crisis*, *supra* note 52, at p. 35.

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]…."[54] As noted above, President Bush's former press secretary stated that the uranium claim "remained in the public mind one of the most potent bits of evidence in the administration's case for war."[55]

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

The full Senate Select Committee on Intelligence in 2004 issued 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).[56] That report cites President Bush's above two uranium statements and Secretary Powell's uranium statement,[57] 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.[58] 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.[59]

---

[54] 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.*

[55] McClellan, *What Happened: Inside the Bush White House and Washington's Culture of Deception*, *supra* note 8, at p. 6. *See also infra* pp. 66-71.

[56] 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*].*

[57] *Id.* at pp. 63-64, 66.

[58] *Id.* at pp. 37-38.

[59] *Id.* at p. 38.

Vice President Cheney read that DIA report and asked his morning briefer for the CIA's analysis of the issue.[60] 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.[61] The CIA sent a copy of that report to Vice President Cheney.[62]

On February 20, 2002, the CIA asked a former ambassador to go to Niger to investigate.[63] 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."[64]

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.[65] That update also mentioned that the CIA would on March 5 be debriefing a source who may have information related to the alleged sale.[66]

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.[67]

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

---

60 *Id.*
61 *Id.* at pp. 38-39.
62 *Id.* at p. 39.
63 *Id.* at pp. 40-41.
64 *Id.* at p. 42.
65 *Id.* at p. 43.
66 *Id.*
67 *Id.*

produce any further analytical products or highlight the report for policy makers.[68] Therefore the CIA's briefer of Vice President Cheney did not brief the Vice President on the report.[69] 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 briefed him.

The Senate Intelligence Committee Report states that the CIA cleared two proposed presidential speeches that the White House's National Security Council (NSC) sent to the CIA in September 2002 that contained the claim that (1) Iraq was caught trying to purchase 500 tons of uranium or (2) that Iraq had sought large amounts of uranium from Africa, but President Bush did not make the uranium claim in said speeches.[70] However, as revealed later, the CIA actually did not clear the uranium claims and said claims were then removed from said speeches.[71]

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."[72] 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*.[73]

---

[68] *Id.* at p. 46.

[69] *Id.*

[70] *Id.* at pp. 49, 51.

[71] *See infra* pp. 33-38.

[72] *Senate Intelligence Committee Report*, *supra* note 56, at p. 50.

[73] 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. 121-123.*

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), the CIA had warned the British government about making the uranium claim in its dossier.[74] 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.[75] 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."[76] 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."[77] (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 in its dossier 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.[78]

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

---

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

75 *Id.*

76 *Id.*

77 *Id.* at para. 7 (emphasis added).

78 *Senate Intelligence Committee Report*, *supra* note 56, at p. 51.

entitled *Iraq's Continuing Programs for Weapons of Mass Destruction*.[79] The NIE stated that Iraq had about 550 tons of uranium in country at Tuwaitha that the UN's 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."[80] 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.[81] The NIE also mentioned reports that indicated that Iraq also sought uranium from Somalia and possibly the Democratic Republic of the Congo.[82] The NIE further stated: "We cannot confirm whether Iraq succeeded in acquiring uranium ore and/or yellowcake from these sources."[83]

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."[84]

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.[85] 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

---

79 *Id.* at pp. 51-54.
80 *Id.* at pp. 52, 54.
81 *Id.* at p. 52.
82 *Id.*
83 *Id.*
84 *Id.* at pp. 53-54.
85 *Id.* at p. 55.

the speech because the amount was in dispute, the claim was debatable, the CIA had told Congress that the British had exaggerated the issue, and Iraq already had 550 tons of uranium in its inventory.[86]

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.[87] 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).[88] 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."[89] 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."[90] On October 7, 2002, President Bush delivered his speech in Cincinnati and did not make the uranium claim.[91]

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.[92] The Iraq nuclear analyst at the State Department's INR received a fax of the documents on or about October 15,

---

86 *Id.* at pp. 55-56.
87 *Id.* at p. 56.
88 *Id.*
89 *Id.*
90 *Id.* at pp. 56-57.
91 *Id.* at p. 57.
92 *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)."[93]

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."[94] 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.[95] 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.[96]

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."[97]

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."[98]

---

93 *Id.*

94 *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.*

95 *Senate Intelligence Committee Report*, *supra* note 56, at p. 61.

96 *Id.* at p. 62.

97 *Id.*

98 *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."[99] 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."[100] 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.[101] The stated reason for the switch from 'we' to the British was the desire to cite 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.[102]

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, President Bush cited "intelligence sources" without providing any more specifics on the sources.[103] 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

---

99 *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.

100 *Id.* at p. 66 (emphasis added).

101 *Id.* at pp. 65-66.

102 *Id.*

103 Bush, *State of the Union Report, supra* note 20, at p. 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.[104] 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.[105] 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).[106] 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.[107] 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

---

104 *See infra* pp. 26-27.
105 *Senate Intelligence Committee Report*, *supra* note 56, at p. 64.
106 *Id.* at p. 240.
107 *Id.*

his grand jury testimony.[108] 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.[109]

According to the White House website, the President 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).[110] 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 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: "[There is] reporting [that] suggest[s that] Iraq has attempted to acquire uranium from Niger. *We cannot confirm these reports …*"[111] 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.[112]

On March 3, 2003, the IAEA told the American government that the uranium documents were forgeries.[113]

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

---

108 *See supra* p. 10, including note 38.

109 *See Senate Intelligence Committee Report, supra* note 56, at pp. 52-54.

110 The White House, *National Security Council,* para. 2.* The current description of the NSC by the Obama White House is basically the same as described by the Bush White House.

111 *Senate Intelligence Committee Report, supra* note 56, at pp. 67-68 (emphasis added).

112 *Id.* at pp. 62, 67.

113 *Id.* at p. 69.

the claim that Iraq had attempted to acquire uranium from Africa.[114] 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.[115]

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* issued in 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.[116] 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.[117] Also as mentioned later, Secretary Powell has admitted that he never believed the uranium claim in President Bush's State of the Union Address.[118] 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.

---

114 Although, as mentioned earlier, Hadley's op-ed article was published on February 16, 2003. *See supra* note 27. However it is not known when Hadley submitted the article. Libby's statements to the press were on background. *See supra* notes 41, 45.

115 *Senate Intelligence Committee Report*, *supra* note 56, at pp. 68, 64.

116 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*].*

117 *Senate Intelligence Committee Report*, *supra* note 56, at pp. 53-54, 62.

118 *See infra* p. 27.

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.[119]

Also a CIA paper dated April 3, 2003 released at Libby's trial 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.*[120]

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

> According to the CIA paper [of 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] in the run-up to the *September 24th* publication of the British White Paper, [the] CIA … "*expressed concerns about the credibility of the reporting* to the British["] ….
>
> On the day the British White Paper was released [September 24th], 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 …"[121]

---

[119] *Senate Intelligence Committee Report*, *supra* note 56, at pp. 54, 71 (emphasis added).

[120] 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).*

[121] 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 120.

Thus the CIA and a senior Intelligence Community official had serious concerns about the Niger uranium claim in September 2002 prior to the October 1st NIE but for some reason those serious concerns were not included in the NIE.[122] 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.[123]

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).[124] 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 remarks concerning the Niger-Iraqi uranium deal had *"raised several concerns about the*

---

[122] 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 56, 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.

[123] *See supra* p. 9.

[124] Tenet, *Statement by George J. Tenet, Director of Central Intelligence*, *supra* note 74.

fragmentary nature of the intelligence with [White House] National Security Council colleagues."[125] After noting that the CIA raised said concerns Tenet stated: "Some of the language was *changed*."[126] 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."[127]

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 replied with a January 2003 memo that stated that the claim that Iraq sought uranium from Niger was baseless and should be laid to rest.[128] 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."[129]

An article in *The Nation* by Robert Scheer posted April 11, 2006 reveals a startling admission by Powell.[130] 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*."[131] However as noted above, on January 26, 2003 Powell in a speech stated: "Why is Iraq still trying to procure uranium …?"[132]

---

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

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

127 *Id.*

128 Barton Gellman and Dafna Linzer, *A 'Concerted Effort' to Discredit Bush Critic*, Wash. Post (Apr. 9, 2006), p. A1, paras. 15-16.*

129 *Id.* at para. 16.

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

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

132 Powell, *Powell Addresses World Economic Summit*, CNN.com, *supra* note 25, at para. 33 of Powell's

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."[133] 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.

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 Bush White House website showed pictures of President Bush preparing his 2003 State of the Union Address and under some of the pictures stated: "President George W. Bush *prepares* his State of the Union Address with White House speechwriters",[134] "President Bush *reviews* the text" with a speechwriter,[135] "[s]ketching notes in the margin of speech *drafts*, President Bush *rewrites* portions of the address",[136] "President Bush *gives his speechwriting team a few points after revising the State of the Union Address*",[137] and "[a]fter days of *revisions* and rehearsals, President Bush reads through his State of the Union speech during a late afternoon practice session."[138]

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 the President, hour by hour, preparing* [his 2003 State of the Union Address], one of the most important [speeches] he would give in office.[139]

---

speech (p. 4 if printed).

133 *Senate Intelligence Committee Report*, *supra* note 56, at pp. 60-61.

134 The Bush White House, *State of the Union: Behind the Scenes* (2003), *infra* p. 153 (emphasis added). This is one of the matters, as mentioned earlier, *supra* note 9, that was on the website of the Bush White House but is not now available on the Internet because that website has ended. The picture with the said statement, and the pictures and wording cited below, are attached to this report. *See infra* pp. 153-155.

135 *Infra* p. 154 (emphasis added).

136 *Infra* p. 154 (emphasis added).

137 *Infra* p. 155 (emphasis added).

138 *Infra* p. 155 (emphasis added).

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

Suskind also notes that when Tenet expressed his concerns to Hadley about the uranium claim in the Cincinnati speech, the CIA also sent a copy of a memo expressing those concerns to Rice (Hadley's boss).[140] 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.[141]

On July 22, 2003, the Bush White House at a press briefing 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.[142] 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."[143] Thus Rice knew that the CIA believed the uranium claim was weak when she spent 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 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."[144] The presidential commission report further states that the ISG "concluded that Iraq had actually ended its nuclear program in 1991."[145]

---

added).

[140] *Id.* at p. 244.

[141] *Iraq on the Record*, *supra* note 15, at p. 14.

[142] The Bush White House, *Press Briefing by Dan Bartlett and Steve Hadley on Iraq Weapons of Mass Destruction and the State of the Union Speech*, American Embassy, Israel (July 22, 2003), paras. 47-49 of transcript (pp. 8-9 if printed).*

[143] *Senate Intelligence Committee Report*, *supra* note 56, at p. 56.

[144] *Presidential Commission Report*, *supra* note 116, at pp. 45, 60.

[145] *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* issued in 2004 was prepared for the CIA Director.[146] That report states: "Iraq did not possess a nuclear device, nor had it tried to reconstitute a capability to produce nuclear weapons after 1991."[147]

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."[148] 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 …"[149]

The Senate Select Committee on Intelligence released a subsequent report in 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*.[150] 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 report.[151] Concerning the

---

146 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*].*

147 *Id*., vol. 2, Nuclear, at p. 7.

148 *Presidential Commission Report*, *supra* note 116, at p. 64.

149 *Iraq Survey Group Report*, *supra* note 146, 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 146, vol. 2, Nuclear, at pp. 3, 13, 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.

150 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).*

151 *Id.* at pp. 5, 8, 22, 25.

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]."[152] The Committee provided a description of the CIA's inconsistencies and contradictions.[153] President Bush and said officials never disclosed those inconsistencies and contradictions when they made the above public uranium claims.

The Senate Select Committee on Intelligence on June 5, 2008 released another report entitled *Report on Whether Public Statements Regarding Iraq by U.S. Government Officials Were Substantiated by Intelligence Information.*[154] Although that report mentions the uranium claim that President Bush made in his January 2003 State of the Union Address, the report offers no conclusion as to whether that particular claim (or any other uranium claim) was substantiated by intelligence information.[155]

---

[152] *Id.* at pp. 12-13 (emphasis added).

[153] *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 failed to mention the July 11, 2003 public statement of 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. *See supra* pp. 26-27.

Also, the Committee mentions not just CIA reports but also a NIC response. *Report of the Select Committee on Intelligence on Postwar Findings About Iraq's WMD Programs and Links to Terrorism*, *supra*, note 150, 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. *See supra* p. 27.

[154] Senate Select Committee on Intelligence, 110th Cong., *Report on Whether Public Statements Regarding Iraq by U.S. Government Officials Were Substantiated by Intelligence Information* (2008).*

[155] The more recent Senate report covers, among other things, the Bush Administration's prewar claims that Iraq had an active nuclear weapons program and had sought uranium for such weapons. *Id.* at pp. 4-16. However, the range of intelligence that might have substantiated *or* invalidated the Administration's prewar claims is rather limited in the report since as that report states the Committee "reviewed only finished analytic intelligence documents, with few exceptions" and did not review "less formal communications between intelligence agencies and other parts of the Executive Branch." *Id.* at p. 2.

The Senate report cites numerous statements by the Bush Administration that Iraq had a nuclear weapons program. *Id.* at pp. 4-6. One of the statements that the report cites was President Bush's statement in his January 28, 2003 State of the Union Address that "[t]he British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa." *Id.* at pp. 5, 11. Although President Bush and senior officials in his Administration in January 2003 made several public statements that Iraq had sought uranium for a nuclear weapon, the Senate report only mentions the uranium claim that President Bush made in his State of the Union Address.

Concerning President Bush's uranium claim, the Senate report notes that an unclassified British white paper from 2002 assessed that Iraq had sought large quantities of uranium from Africa. *Id.* at p. 11. The British assessment was then echoed in our government's October 2002 National Intelligence Estimate (NIE) that stated that Iraq had vigorously tried to procure uranium. *Id.* The Senate report also notes that the NIE contained the alternative view of the State Department's intelligence bureau (INR) that the uranium claim was "highly dubious." *Id.* at p. 12. The Senate report, citing one its earlier reports (the report mentioned above, *supra* note 150), states that after the October 2002 NIE the "CIA's comments and assessments about the Iraq-Niger uranium reporting were inconsistent, and at times contradictory", while the assessments of other agencies did not shift. *Report on Whether Public Statements Regarding Iraq by U.S. Government Officials Were Substantiated by Intelligence Information*, *supra* note 154, at p. 12. The recent Senate report then notes that the earlier reports of the Committee (the reports mentioned above, *supra* notes 56, 150) contain more details about intelligence assessments regarding the uranium claim and the coordination process for the State of the Union Address. *Report on Whether Public Statements Regarding Iraq by U.S. Government Officials Were Substantiated by Intelligence Information*, *supra* note 154, at p. 12

The Senate report makes the broad conclusion that the Administration's prewar statements "regarding a possible Iraqi nuclear weapons program were generally substantiated by intelligence community estimates, but did not convey the substantial disagreements that existed in the intelligence community." *Id.* at p. 15. Concerning intelligence that substantiated the Administration's statements, the report notes that prior to the October 2002 NIE some intelligence agencies assessed that Iraq was "reconstituting a nuclear weapons program, while others disagreed or expressed doubts about the evidence." *Id.* The report then notes that the October 2002 NIE "expressed the majority view that the program was being reconstituted, but included clear dissenting views …, which argued that reconstitution was not underway." *Id.*

Although the Senate report offers the above conclusion that intelligence substantiated the Administration's general claims that Iraq had a nuclear weapons program, the report refrains from making any specific conclusions about whether intelligence information substantiated the Administration's specific (and most notorious) claims that Iraq had sought uranium for a nuclear weapon. Perhaps the reason for this omission is that the report was limited to reviewing only finished analytic intelligence documents and the Committee was aware of intelligence that did not meet that technical criteria but which, rather than substantiated, actually invalidated the claim that Iraq had sought uranium. *See infra* pp. 33-38.

Concerning the uranium claim, other than mentioning the State Department's alternative view in the NIE that the uranium claim was highly dubious the Senate report does not cite the numerous intelligence warnings discrediting the uranium claim mentioned above. The Senate report does make some general references to other intelligence assessments in earlier reports but does not describe those assessments (nor provide page numbers where the assessments can be found). Compared to the statement in the above-mentioned NIE of October 2002 that Iraq had vigorously tried to procure uranium, the above warnings issued near the time of the uranium claims in January 2003 were much stronger and substantiated the opposite conclusion, which was that Iraq had not sought the uranium. Also the Senate report fails to mention that it was the National Intelligence Council (NIC) that published the NIE in October 2002, and the Senate report fails to mention the memo that the NIC sent to the White House in January 2003, which stated that the uranium claim was baseless and should be laid to rest. *See supra* pp. 17-18, 27. Thus the NIC had as a practical matter withdrawn the part of the NIE that stated that Iraq had sought uranium for a nuclear weapon. Again, the failure of the recent Senate report to include the above warnings about the uranium claim was probably due to the limited scope of the intelligence that the report covered.

The recent Senate report also fails to mention that the American government on February 4, 2003 told the UN: "We cannot confirm these reports [that suggest Iraq attempted to acquire uranium from Niger.]" *See supra* p. 23. The synonym for the word 'substantiate' is the word 'confirm'. *Merriam Webster's Collegiate Dictionary* (10th Edition, 2000), p. 1170. Thus around the time that the Administration was making its public statements that Iraq had sought uranium for a nuclear weapon, the American government was telling the UN that it could not confirm or substantiate those claims.

As noted later, a fraudulent statement is one that contains half-truths, conceals material facts, and is made with the intent to deceive. *See infra* pp. 98-100. Thus even if the uranium claims were substantiated they were still fraudulent since other material facts were concealed, including the facts in the recent Senate report about the State Department's alternative view that the uranium claim was highly dubious and the CIA's contradictory statements about the claim. The other warnings mentioned above were also concealed. Thus the more recent Senate report supports the view that President Bush's uranium claim was fraudulent.

Furthermore Congressman Henry Waxman, as Chairman of the House Committee on Oversight and Government Reform, issued a Memorandum (Waxman Memorandum) dated December 18, 2008 that reported that the CIA in September 2002 issued two warnings to the Bush White House not to use the uranium claim, and those warnings contradicted the accounts that the Bush White House provided to the Senate Intelligence Committee, which were accounts that the committee relied on in its above mentioned 2004 report.[156]

As mentioned earlier, the Senate Report states that the CIA cleared two proposed presidential speeches that the White House's NSC sent to the CIA in September 2002 that contained the claim that Iraq was caught trying to purchase 500 tons of uranium or that Iraq had sought large amounts of uranium from Africa.[157] The request for the clearance for the first speech was made on September 11, 2002, and the request for the clearance for the second speech was made on September 24, 2002.[158] According to the Senate Report, the CIA cleared both speeches but President Bush did not use the approved language.[159] The Senate Report leaves the impression that although the CIA approved the language concerning the uranium claims, the White House exercised discretion and decided not to use the uranium claims.

However, as revealed in the Waxman Memorandum, the CIA never cleared the uranium claims in the said two proposed speeches and actually warned the White House not to use the claims.[160] The situation concerning the two proposed presidential speeches in September 2002 was similar to the situation concerning above-mentioned Cincinnati speech a few weeks later in early October 2002 where the CIA, including then Director Tenet warned the White House that

---

156 Henry A. Waxman, Chairman House Committee on Oversight and Government Reform, 110th Cong., *Memorandum Re: The President's Claim that Iraq Sought Uranium from Niger* (2008) [hereinafter *Waxman Memorandum*].*

157 *See supra* p. 16; *Senate Intelligence Committee Report, supra* note 56, at pp. 49, 51.

158 *Senate Intelligence Committee Report, supra* note 56, at 49, 51.

159 *Id.*

160 *Waxman Memorandum, supra* note 156, at pp. 1-2, 5-6, 7-8, 11.

President Bush should not make the uranium claim and the White House then removed the claim from the speech.[161]

The Waxman Memorandum was a result of an investigation by the House Committee on Oversight and Government Reform into the uranium claim that President Bush made in his January 2003 State of the Union Address.[162] As noted in the Waxman Memorandum, Senator John D. Rockefeller IV, Vice Chairman of the Senate Intelligence Committee, in a letter dated October 30, 2003 asked the Bush White House to provide examples where the CIA cleared remarks in presidential speeches concerning Iraq's efforts to acquire uranium.[163] Then White House Counsel Alberto Gonzales in a letter dated January 6, 2004 to Senator Rockefeller and the Senate Intelligence Committee stated that then National Security Advisor Rice asked him to respond to said letter.[164] Referring to the first of the above two proposed speeches Gonzales stated that on "September 11, 2002, CIA officials orally cleared [the uranium claim] for use by the President" in a proposed speech, and he further stated that the "language cleared by the CIA was identical to the language proposed for clearance by the White House staff, except that it appears that CIA may have suggested the addition of the words 'up to' in the third sentence."[165] As noted in the Waxman Memorandum, the speech referred to was the speech that President Bush gave to the UN on September 12, 2002.[166] The Senate Intelligence Committee relied on that representation as a basis for the above mentioned statement in its above report that the CIA in September 2002 cleared a proposed presidential speech that contained the statement that Iraq was caught trying to purchase 500 tons of uranium.[167]

---

161 *See supra* pp. 18-19.
162 *Waxman Memorandum, supra* note 156, at p. 1.
163 *Id.* at p. 6.
164 *Id.* at pp. 1, 6.
165 *Id.* at pp. 5-6.
166 *Id.*
167 *Id.* at pp. 1, 6; *Senate Intelligence Committee Report, supra* note 56, at p. 49.

As part of its investigation into President Bush's uranium claims, the staff of the House Committee on Oversight and Government Reform in 2007 interviewed John Gibson who previously worked for then National Security Advisor Rice at the NSC as Director of Foreign Policy Speechwriting.[168] Gibson stated that he was asked to draft President Bush's UN speech of September 12, 2002, and on September 11, Michael Gerson, the chief White Hose speechwriter, and Robert Joseph, the Senior Director for Proliferation Strategy, Counterproliferation, and Homeland Defense at the NSC, asked him to include a reference in the speech about "evidence that purported to show that Iraq had attempted to purchase enriched uranium or uranium from an African country, Niger."[169]

Gibson stated that he inserted the uranium claim into the speech and then sent it to the CIA for review.[170] Gibson stated that there were further discussions at the White House concerning the uranium claim in the speech and that the claim would not be included if the CIA did not stand behind the claim.[171] Gibson stated that the CIA rejected the inclusion of the uranium claim in the speech, and that Joseph "relayed to me that we've got to pull it, the agency is just not comfortable with it."[172] Joseph told Gibson that the CIA raised specific concerns that the uranium claim "was from a single foreign source" and "was not sufficiently reliable to include it in the speech."[173] Gibson stated that the "CIA was not willing to clear that language" and "[a]t the end of the day, they did not clear it."[174] The uranium claim was then removed from the UN speech and President Bush did not make the claim in the speech.[175]

---

168 *Waxman Memorandum, supra* note 156, at p. 5.
169 *Id.*
170 *Id.*
171 *Id.*
172 *Id.*
173 *Id.* at pp. 5-6.
174 *Id.* at p. 7.
175 *Id.* at p. 6.

Concerning the second of the two proposed speeches, in his letter of January 6, 2004, Gonzales stated that on "September 24, 2002, CIA officials orally cleared the [uranium claim] for use by the President" in a proposed speech, and he further stated that the "language cleared by CIA was identical to the language proposed for clearance by White House staff, except that it appears that CIA may have suggested that the second sentence read 'in the process' rather than 'of the process.'"[176] As noted in the Waxman Memorandum, the speech referred to was the speech that President Bush gave in the White House Rose Garden on September 26, 2002.[177] The Senate Intelligence Committee relied on that representation as a basis for the above-mentioned statement in its report that the CIA in September 2002 cleared a proposed presidential speech that contained the claim that Iraq had sought large amounts of uranium from Africa.[178]

As part of its investigation into President Bush's uranium claims, the staff of the House Committee on Oversight and Government Reform in 2007 interviewed Jami Miscik, the former Deputy Director of Intelligence for the CIA.[179] Miscik stated that there was a dispute between the NSC and the CIA about whether to include a uranium claim in the speech that President Bush was to give in the White House Rose Garden on September 26, 2002.[180] She stated that CIA staff needed her help because the officials who worked for Rice at the NSC "wouldn't take [the uranium claim] out of the speech."[181] She stated that CIA officials asked her to call Rice directly to explain why they did not think the uranium claim was credible and she stated that she believed that it was necessary to call Rice because Rice's staff had continued to resist the CIA's requests to remove the claim.[182] She stated that the reasons why the CIA officials wanted the claim

---

176 *Id.* at p. 9.
177 *Id.* at pp. 7, 9.
178 *Id.* at pp. 1, 9; *Senate Intelligence Committee Report*, *supra* note 56, at p. 51.
179 *Waxman Memorandum*, *supra* note 156, at p. 7.
180 *Id.*
181 *Id.*
182 *Id.* at pp. 7-8.

removed included the fact that Iraq already had stockpiles of uranium, the uranium mines in Niger were run by the French, and that some of the mines were underwater.[183]

Miscik stated that she spoke with Rice on the phone on September 24, 2002 and Rice began the conversation by stating: "I understand we have an issue on the speech."[184] Miscik then relayed to Rice that the CIA had "concerns" about including the uranium claim in the President's speech and that the CIA was "recommending that it be taken out."[185] At the end of the call, Rice stated that 'why don't we just remove the sentences' and Miscik agreed.[186] The uranium claim was then removed from the Rose Garden speech and President Bush did not make the claim in the speech.[187]

Concerning the above-mentioned Cincinnati speech of October 7, 2002, the Waxman Memorandum states that the Senate Report appears to accurately report the warnings that the CIA issued concerning that speech.[188] However, as part of its investigation the House Committee on Oversight and Government Reform conducted a deposition of former CIA Director Tenet who testified that his staff told him: "[W]e need to get this [uranium claim] out [of the Cincinnati speech]. We don't believe this. We need to get it out of the speech. It's not coming out. Can you call Mr. Hadley?"[189] Tenet testified that he called Hadley and told him: "Steve, take it out. We don't want the President to be a fact witness on this issue…. The facts … were too much in doubt."[190] Tenet testified: "We sent two memos to Mr. Hadley saying, this is why you don't let the President say this in Cincinnati."[191] According to Tenet the President's

183 *Id.* at p. 8.
184 *Id.*
185 *Id.*
186 *Id.*
187 *Id.* at p. 9.
188 *Id.* at p. 10.
189 *Id.*
190 *Id.*
191 *Id.* at p. 11.

speech in Cincinnati did not include the uranium claim because the CIA had explicitly informed the White House that it was not clearing the claim.[192]

The Waxman Memorandum concludes:

> [T]here is now evidence that at least four top officials at the National Security Council – Dr. Rice; Stephen Hadley, Deputy National Security Advisor; Robert Joseph, Senior Director for Proliferation Strategy, Counterproliferation, and Homeland Defense; and John Gibson, Director of Foreign Policy Speechwriting – had been warned by the CIA to stop using the uranium claim.[193]

Therefore the CIA was consistent its earlier warnings in September, October 2002 to the White House that President Bush should not to make the uranium claim, and those warnings were consistent with the CIA's later warning in January 2003 regarding the uranium claim in President Bush's State of the Union address. In the earlier speeches President Bush and the White House accepted the warnings and did not use the uranium claim. However, as explained later, by January 2003 there were Congressional efforts to repeal or modify the Congressional war resolution because UN weapons inspectors after months of inspections in Iraq had not found any weapons of mass destruction.[194] Faced with the fact that the UN inspectors were not finding any weapons of mass destruction, President Bush and his White House became desperate and resorted to the uranium claims to scare Congress and maintain support for the war resolution[195]

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

---

192 *Id.* at pp. 10-11.
193 *Id.* at p. 11.
194 *See infra* pp. 46-47.
195 *See infra* pp. 47-53.

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.[196]

Also, the said uranium claims of President Bush, Rice, Powell, and Rumsfeld were fraudulent, as that term is defined later,[197] 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:

(1) the CIA's warning to the White House's NSC around September 11, 2002, as revealed by Joseph of the NSC, that the uranium claim was not sufficiently reliable to include in a presidential speech, and as Gibson of the NSC stated the CIA refused to clear that claim;[198]

(2) the CIA's Deputy Director of Intelligence warning to Rice on September 24, 2002 that the CIA had concerns about the uranium claim in a proposed presidential speech and her

---

[196] It is important to note that the above claims that President Bush and his officials made about Iraq recently and surreptitiously seeking uranium were not in reference to the uranium that Iraq had in country for years and that the IAEA inspected annually. As noted earlier, the 2004 Senate report states that the 2002 NIE stated that Iraq had about 550 tons of uranium in country at Tuwaitha that the UN's IAEA inspected annually. *Senate Intelligence Committee Report*, *supra* note 56, at pp. 52, 54. It would be reasonable to assume that spy satellites also monitored the site.

As noted in a newspaper article, last year American and Iraqi officials moved the uranium (about 600 tons) in Tuwaitha to Canada. Alissa J. Rubin and Campbell Robertson, *U.S. Helps Remove Uranium from Iraq*, New York Times (July 7, 2008).* The article notes that Tuwaitha had been the site of Iraq's nuclear program in the past and American warplanes bombed that site in 1991 in the first gulf war. That article also states: "The yellowcake [uranium] removed from Iraq … was not the same yellowcake that President Bush claimed, in a now discredited section of his 2003 State of the Union address, that Mr. Hussein was trying to purchase in Africa." *Id.* at para. 9.

As mentioned earlier, the Iraq Survey Group in its 2004 report to the CIA Director stated that "Iraq did not posses a nuclear device, nor had it tried to reconstitute a capability to produce nuclear weapons after 1991", and the ISG further stated that it "has not found evidence to show that Iraq sought uranium from abroad after 1991." *Iraq Survey Group Report, supra* note 146, vol. 2, Nuclear, pp. 7, 9. The ISG noted that Iraq had uranium in country and had acquired that uranium in the 1970's and early 1980's. *Id.* at pp. 3, 13. The ISG also stated that Iraq declared that uranium in its December 7, 2002 report to the UN. *Id.* at. pp. 3, 14; *Id.*, vol. 3, Glossary and Acronyms, at p. 2.

The claims that the Bush Administration made in January 2003 that Iraq had recently and surreptitiously sought uranium from abroad surely had a much greater tendency to scare people than the facts mentioned in the NIE, Senate, and ISG reports about Iraq having uranium for years, which Iraq did not hide and which was subject to annual international inspections. The fact that Iraq had uranium for years and did not use it in a nuclear weapon against another country would suggest that even if Iraq had nuclear weapons it also had a track record of not using those weapons. However, it would be another thing if Iraq had recently and surreptitiously acquired the fuel for a nuclear weapon and could now at any moment launch that nuclear weapon.

[197] *See infra* pp. 98-100.

[198] *Waxman Memorandum, supra* note 156, at pp. 5-7.

statement to Rice that the CIA was recommending that the claim be taken out of the speech (which Rice agreed to do), and the CIA's earlier warnings to Rice's NSC staff about the claim;[199]

(3) 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;[200]

(4) the CIA Director's warning on October 6, 2002 to Rice's deputy Hadley that the reporting on uranium claim in the Cincinnati speech was weak, the facts were too much in doubt, and President Bush should not make the claim, and the CIA's later memo to Rice and Hadley that the evidence on the uranium claim was weak and that President Bush should not make it;[201]

(5) the State Department INR's dissent in the October 2002 NIE that the claim that Iraq sought uranium from Africa was highly dubious;[202]

(6) 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;[203]

(7) the CIA's warning to the White House in January 2003 about the fragmentary nature of the intelligence on the uranium claim in the draft of the State of the Union Address;[204]

(8) 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 war against Iraq, warning that the Niger uranium story was baseless and should be laid to rest;[205]

---

199 *Id.* at pp. 7-9.

200 *Senate Intelligence Committee Report*, *supra* note 56, at p. 51.

201 *Id.* at pp. 56-57; *Iraq On The Record*, *supra* note 15, at p. 14; The Bush White House, *Press Briefing by Dan Bartlett and Steve Hadley on Iraq Weapons of Mass Destruction and the State of the Union Speech*, American Embassy, Israel, *supra* note 142, paras. 47-49 of transcript (pp. 8-9 if printed); *Waxman Memorandum*, *supra* note 156, at pp. 10-11.

202 *Senate Intelligence Committee Report*, *supra* note 56, at pp. 53-54.

203 *Id.* at p. 62.

204 Tenet, *Statement by George J. Tenet, Director of Central Intelligence*, *supra* note 74, at para. 12.

205 Gellman and Linzer, *A 'Concerted Effort' to Discredit Bush Critic*, Wash. Post, *supra* note 128, paras. 15-16.

(9) the NSC's own belief as expressed in January 2003 to the NIO that the nuclear case against Iraq was weak;[206]

(10) the American government's warning in early February 2003 to the UN's IAEA that it could not confirm the uranium reports;[207]

(11) 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.[208]

(12) Secretary Powell's admission that he "never believed" the uranium claim in President Bush's State of the Union Address.[209]

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,[210] (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,[211] (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,[212] 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.[213]

---

206 *Senate Intelligence Committee Report*, *supra* note 56, at p. 240.

207 *Id.* at pp. 67-68.

208 *Presidential Commission Report, supra* note 116, at p. 213, note 210.

209 Scheer, *Now Powell Tells Us*, The Nation, *supra* note 130, at para. 9.

210 *Senate Intelligence Committee Report*, *supra* note 56, at pp. 53-54.

211 *Id.* at 54; Gellman and Linzer, *A 'Concerted Effort' to Discredit Bush Critic*, Wash. Post, *supra* note 128, at paras. 15-16.

212 *Senate Intelligence Committee Report*, *supra* note 56, at p. 71.

213 Government Exhibit 2A, *Memorandum for the Vice President from: John Hannah*, *supra* note 121, at p. 1

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

As noted by Bob Woodward in his book *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).[214] As noted in *The Constitution in Crisis*, WHIG met weekly in the White House Situation Room.[215] WHIG included Card, Rice, Hadley, Libby, and Nicholas Calio who was the director of the White House's congressional relations office.[216] WHIG also included Karl Rove.[217]

WHIG's purpose was to persuade the public and Congress of the need to invade Iraq.[218] 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."[219]

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."[220] 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."[221] Libby was not only a member of WHIG but as mentioned earlier according to Schmall, who was Libby's CIA briefer,

---

(001445).

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

215 *The Constitution in Crisis*, *supra* note 52, 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 and Walter Pincus, *Depiction of Threat Outgrew Supporting Evidence*, Wash. Post (Aug. 10, 2003), p. A1*).

216 Woodward, *Plan of Attack*, *supra* note 214, at pp. 168, 137. *See also The Constitution in Crisis*, *supra* note 52, 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 215).

217 *The Constitution in Crisis*, *supra* note 52, 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 215).

218 *The Constitution in Crisis*, *supra* note 52, at p. 33.

219 Woodward, *Plan of Attack*, *supra* note 214, at p. 168.

220 *Id.* at p. 172.

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

Libby "was in charge within the administration (or at least the White House side) for producing papers arguing the case for Iraqi WMD."[222]

As noted earlier, President Bush chaired the NSC and the attendees at its meetings included 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.[223] 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."[224] Thus WHIG and the NSC obviously coordinated the five uranium claims that the Bush Administration made in January 2003. Libby and his boss obviously played key roles.

E. Motive to Make False and Fraudulent Statements

The motive of President Bush and his senior officials for making their false and fraudulent uranium claims was that they feared losing support for the war and needed something to 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."[225] Under the War Powers Resolution of 1973, President Bush could not have used military force in Iraq for more than ninety days without a Congressional declaration of war or a specific Congressional (statutory) authorization.[226] 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

---

222 Defense Exhibit 421, *Message by Craig Schmall*, *supra* note 29, at p. 2 (DX421.2).
223 The White House, *National Security Council*, *supra* note 110, at para. 2.
224 *Id.* at para. 1.
225 U.S. Const. art. I, § 8.
226 50 U.S.C. § 1544(b).

by concurrent resolution."[227] Thus regarding the October 2002 resolution that authorized the use of military force in Iraq (war resolution), Congress could have repealed that resolution prior to the start of the war, and also could have repealed it after the start of the war and ordered President Bush to remove the troops. The October 2002 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.[228]

The above two grounds for the war stated in the resolution were closely related to the earlier portions of the resolution that stated that a previous UN Security Council resolution required Iraq to cease the development of weapons of mass destruction, and 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."[229]

However, the war resolution was not intended to start an immediate war since it also contained provisions encouraging President Bush's diplomatic efforts to "enforce through the United Nations Security Council all relevant Security Council resolutions regarding Iraq" and encouraging his efforts to get the Security Council to take action to ensure Iraq's compliance with those resolutions.[230] Also the war resolution stated that the President prior to the use of such military force (or within 48 hours of using it) must provide a determination to Congress that

> reliance by the United States on *further diplomatic or other peaceful means* alone either (A) will not adequately protect the national security of the United States against the continuing threat posed by Iraq or (B) is not likely to lead to enforcement of all relevant [UN] Security Council resolutions regarding Iraq.[231]

---

227 50 U.S.C. § 1544(c). The October 2002 resolution authorizing the use of military force in Iraq did not supersede the 1973 War Powers Resolution. Iraq War Res. of 2002, Pub. L. No. 107-243, § 3(c)(2), 116 Stat. 1501.

228 Iraq War Res. of 2002, Pub. L. No. 107-243, § 3(a)(1)-(2), 116 Stat. 1501.

229 *Id*., Pub. L. No. 107-243, introduction, paras. 14, 4, 6, 116 Stat. 1498-1499.
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 15, at pp. 7-9.

230 Iraq War Res. of 2002, Pub. L. No. 107-243, § 2, 116 Stat. 1501.

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

The war resolution also stated that the "President shall, at least once every 60 days, submit to the Congress a report on matters relevant to this joint resolution."[232]

President Bush obtained the Congressional resolution for the war in October 2002, but did not start the war until five months later in March 2003. During that five months the Bush Administration needed to continue to pursue diplomatic efforts and to provide to Congress information that persuaded Congress that Iraq was a continuing threat to our national security and was not complying with UN resolutions, or else Congress might have repealed the resolution or at least modified it to delay the start of the war to encourage further diplomatic efforts.

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."[233]

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."[234]

The resolution required Iraq to cooperate fully in the implementation of the resolution, and stated that Iraq faced "serious consequences" for violations of its obligations.[235]

Iraq on November 13, 2002 agreed to S.C. Res. 1441,[236] and on November 27 Iraq allowed UN weapons inspectors to reenter Iraq.[237] On December 7 Iraq provided a declaration to the UN in response to S.C. Res. 1441.[238]

---

232 *Id.*, Pub. L. No. 107-243, § 4(a), 116 Stat. 1501.

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

234 *Id.* at p. 4 (para. #7).

235 *Id.* at pp. 3 (para. #4), 5 (para. #13).

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.[239] 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."[240] President Bush told Rice that the "pressure isn't holding together" and he commented about the antiwar protests in the United States and Europe.[241]

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 the war resolution should be repealed to allow more time for UN weapons inspections.[242] The new resolution stated 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."[243] The 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."[244]

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

---

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

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

238 UN News Centre, Press Release, *Iraq Hands over Declaration to UN* (Dec. 7, 2002).* Iraq declared uranium purchases that it had made in the 1970's and early 1980's. *See supra* note 149.

239 Woodward, *Plan of Attack*, *supra* note 214, at p. 253.

240 *Id.*

241 *Id.*

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

243 *Id.* at para. 3.

244 *Id.* at para. 5.

agency that monitored everything in Congress including closed-door briefings.[245] Calio was not only President Bush's personal lobbyist to Congress but also a member of WHIG.[246]

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.[247] 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."[248]

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 issued its above mentioned report, and in an accompanying press release stated that regarding S.C. Res. 1441 "it would appear that Iraq had decided in principle to provide cooperation on substance in order to complete the disarmament task through inspection."[249] There were some questions concerning chemical and biological weapons.[250] However, the press release stated that Mohamed ElBaradei, the head of the UN's 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."[251] The press release

---

245 Woodward, *Plan of Attack*, *supra* note 214, at pp. 137, 168, 171.

246 *Id.* at p. 168; *The Constitution in Crisis*, *supra* note 52, at p. 33 (*see also supra*, note 216).

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

248 *Id.* at paras. 3, 1.

249 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.*

250 *Id.* at paras. 3-4.

251 *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.[252]

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*.[253]

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."[254]

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.[255] The war resolution authorized President Bush to

---

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

[252] Security Council, *Security Council Briefed by Chief UN Weapons Experts on First 60 Days of Inspections in Iraq, supra* note 249, at para. 43 (p. 7 if printed); *see also* IAEA, *The Status of Nuclear Inspections in Iraq*, *supra* note 251, at para. 17 (p. 3 if printed) (containing ElBaradei's statements regarding uranium).

[253] Security Council, *Security Council Briefed by Chief UN Weapons Experts on First 60 Days of Inspections in Iraq, supra* note 249, at para. 48 (p. 7 if printed) (emphasis added); *see also* IAEA, *The Status of Nuclear Inspections in Iraq, supra* note 251, at para. 27 (p. 4 if printed) (containing ElBaradei's statement).

[254] Woodward, *Plan of Attack*, *supra* note 214, at p. 286.

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

use military force in order to (1) defend our national security against the continuing threat posed by Iraq and (2) enforce UN Security Council resolutions.[256] 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.[257] 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 a great deal of 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.[258]

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.

---

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

257 H. Con. Res. 2 (2003), *supra* note 242, at para. 3.

258 *Id.* at para. 5.

Thus when President Bush and said officials made their uranium claims in January 2003 they were facing a Congressional movement to delay the start of the war that was based on the fact that UN weapons inspectors had recently entered Iraq and found no weapons of mass destruction. Earlier in September, October 2002, President Bush and the White House followed the CIA's warnings on the uranium claims and removed the claims from presidential speeches.[259]

However by January 2003, after the UN inspectors had entered Iraq and found no weapons of mass destruction, the White House became desperate in face of the Congressional movement to delay the war, and the White House ignored the CIA's warnings and resorted to the uranium claims to maintain support for starting the first pre-emptive war in our nation's history.

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 ….[260]

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

---

259 *See Waxman Memorandum*, *supra* note 156, at pp. 5-9.

260 Bush, *State of the Union Report*, *supra* note 20, at p. 9 (emphasis added).

a few more months of inspections should be allowed in order to avoid a war.[261] 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 inspectors[262]), 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:

> 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 a nuclear weapon?*
>
> These questions are not academic. They're 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 these 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 evasion and with 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 technology, or use these weapons again.*[263]

Powell 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.[264] An article in *The New York Times* stated that Powell's speech criticizing those who sought more time for inspections was "part of a campaign by the White House, culminating in President Bush's State of the Union address …, to rally public opinion at home and abroad."[265]

---

[261] Security Council, *Security Council Briefed by Chief UN Weapons Experts on First 60 Days of Inspections in Iraq*, *supra* note 249, at paras. 6-7, 48 (pp. 1-2, 7 if printed).

[262] *See* H. Con. Res. 2 (2003), *supra* note 242, at para. 5.

[263] Powell, *Powell Addresses World Economic Summit*, CNN.com, *supra* note 25, at paras. 33-36 of Powell's speech (pp. 3-4 if printed) (emphasis added).

[264] *Id.* at para. 39 (p. 4 if printed).

[265] Mark Landler and Alan Cowell, *Threats and Responses: Diplomacy; Powell, in Europe, Nearly Dismisses*

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…[266]

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 ….
>
> 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.*[267]

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 having sought the fuel for nuclear weapons did have such weapons and thus was an imminent threat to our national security. According to President Bush and his senior officials they might not have found a smoking gun

---

U.N.'s Iraq Report, New York Times (Jan. 27, 2003), para. 11.*

[266] Rumsfeld, *DoD News Briefing – Secretary Rumsfeld and Gen. Myers*, *supra* note 26, p. 1 (emphasis added)

[267] Rice, *Why We Know Iraq Is Lying*, *supra* note 24, at paras. 5-6, 9 (emphasis added).

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 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 Bush Administration, in response to obvious pressure from the IAEA, gave the IAEA the forged documents in support of the uranium claim. The Bush Administration's public statements that Iraq had recently sought uranium for a nuclear weapon no doubt caused the IAEA to realize that as part of its inspection process it needed to obtain any documents that supported that 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.[268] 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.[269]

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.

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.[270] 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.[271] 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."[272] The resolution adopted that point and 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.[273]

---

268 *See Senate Intelligence Committee Report, supra*, note 56, at 67-68.

269 *See supra* pp. 5-7, 23-24. 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. 5-7.

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

271 *Id.* at paras. 8, 9.

272 *Id.* at para. 14.

273 *Id.* at para. 21 (# 4).

Also on January 29, 2003, Senator Edward Kennedy submitted Senate Resolution 32 that expressed the sense of the Senate that before President Bush uses military force against Iraq without the broad support of the international community 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.[274] 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.[275]

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.[276] 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.[277] The resolution also adopted that point and 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.[278]

---

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

275 *Id.* at paras. 2, 4.

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

277 *Id.* at para. 13.

278 *Id.* at para. 20 (# 4).

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.[279]

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*."[280] 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."[281]

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.[282]

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).[283] The draft resolution also stated that the Security Council "[r]ecogniz[es] the threat [that] Iraq's … proliferation of weapons of mass destruction … poses

---

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

280 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).*

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

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.

282 *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 56, at p. 67.

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

to international peace and security."[284] The draft resolution stated that "Iraq will have failed to take the *final opportunity* afforded by" Security Council Resolution 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 that resolution and was yielding to UN weapons inspectors "all weapons, weapon delivery and support systems and structures" required under Security Council resolutions.[285] 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.

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.*"[286]

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*."[287]

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

---

284 *Id.*

285 *Id.* at p. 2 (emphasis added).

286 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).*

287 *See* UN News Centre, Press Release, *IAEA Sees Progress in Identifying Iraq's Nuclear Capabilities, Security Council Told, supra* note 286, at para. 7 (emphasis added); IAEA, *The Status of Nuclear Inspections in Iraq: An Update, supra* note 286, at p. 4 (emphasis added).

need at the time for additional resolutions that declared that Iraq had failed to take the final opportunity to disarm.[288]

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.[289]

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*".[290]

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.[291]

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.[292]

---

[288] UN News Centre, Press Release, *Several Security Council Members Call for More Inspections in Iraq* (Mar. 7, 2003), paras. 1-2.*

[289] 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).*

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

[291] 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.*

[292] *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).*

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.[293] The resolution noted that President Bush had "declared in a variety of documents and fora that the United States has the 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'".[294] 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 …[295]

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."[296] The resolution concluded:

---

293 H. Res. 141, 108th Cong. (2003).*

294 *Id.* at para. 1.

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

296 *Id.* at para. 3.

> (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.[297]

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 nuclear weapons is a hoax."[298] Waxman quoted from ElBaradei's report that the documents in support of the uranium claim were "not authentic."[299] Waxman noted the above article in the *Washington Post* entitled *Some Evidence on Iraq Called Fake, U.N. Nuclear Inspector Says Documents on Purchases Were Forged.*[300] 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.[301] 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.[302]

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

---

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

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

299 *Id.* at p. 4.

300 *Id.* (including note 8).

301 *Id.* at p. 5.

302 *Id.* at pp. 5-6.

the Union Address and if so what did the CIA say about the uranium claim.[303] 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."[304]

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.[305] The French Ambassador, who was against the draft resolution, stated that the resolution's sponsors 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.[306]

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*.[307]

---

303 *Id.* at p. 7.

304 *Id.* at pp. 7, 1.

305 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).*

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

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

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.[308] The new 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 …"[309] The resolution stated that many of those unfounded claims were highlighted in the above recent article *Bush Clings to Dubious Allegations About Iraq*; the resolution noted that ElBaradei had stated that there was no evidence of resumed nuclear activities in Iraq; and the resolution further stated that "key evidence supporting the allegation of an Iraqi nuclear program has been exposed as a forgery."[310]

With the Administration's most alarming claim in support of the war vanishing on March 7 due to ElBaradei's report that the documents in support of that claim were fake, President Bush twelve days later on March 19 started the war rather than seeking a vote on a Security Council resolution authorizing the war, and rather than allowing the UN inspectors the time to finish their inspections, the results of which would have caused further Congressional efforts to delay 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.'"[311] In the report that the war resolution required President Bush to submit prior to the use of military force in Iraq, he did not mention that public opinion was growing against the war but rather in that report that he submitted to Congress on

---

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

309 *Id.* at para. 2.

310 *Id.* at paras. 3, 4, 5.

311 Woodward, *Plan of Attack*, *supra* note 214, at p. 357.

March 18, 2003 he stated that he had determined that "reliance by the United States on further diplomatic and other peaceful means alone will neither (A) adequately protect the national security of the United States against the continuing threat posed by Iraq nor (B) likely lead to enforcement of all relevant United Nations Security Council resolutions regarding Iraq."[312]

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 documents" and therefore the allegations were unfounded.[313]

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.[314]

The next month, Vice President Cheney directed the attack against those who 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.[315]

---

312 George W. Bush, *Communication from the President of the United States Transmitting a Report Consistent with Section 3(b) of the Authorization for Use of Military Force Against Iraq Resolution of 2002, Public Law 107-243*, House Document No. 108-50 (Mar. 18, 2003), p. 1.*

313 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 (UNMOVIC), *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 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 (emphasis added).

314 H. Res. 260, 108th Cong. (2003).*

However, Congress did not repeal the Congressional authorization for the war perhaps because of what Secretary Powell described as the Pottery Barn rule: You break it, you own it.[316]

As more fully noted later, McClellan provides more information regarding the Administration's motives for making the false and fraudulent uranium claims.[317]

F. The Downing Street Minutes

There is a prewar memo dated July 23, 2002, called the Downing Street Minutes, about a meeting attended by Prime Minister Tony Blair and senior British officials.[318] 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.[319]

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.[320] 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.[321]

---

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

316 *See* Woodward, *Plan of Attack*, *supra* note 214, at p. 150.

317 *See infra* pp. 66-71.

318 *The Constitution in Crisis*, *supra* note 52, at p. 27.

319 *Id.* at pp. 27-28.

320 *Iraq on the Record*, *supra* note 15, at pp. ii, 3, 13.

321 *Id.* at p. 6.

The report lists statements starting on March 17, 2002,[322] 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."[323] The 237 misleading statements were made in 125 separate public appearances.[324]

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.[325]

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 23, 2008, provides an even broader review and reveals that the Bush Administration made 935 false claims that Iraq posed a threat to national security.[326] That report states:

> 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*.[327]

---

322 *Id.* at pp. ii, 3.
323 *Id.* at pp. ii, 3-4.
324 *Id.* at p. 3.
325 *Id.* at pp. 25-29.
326 Charles Lewis and Mark Reading-Smith, *Iraq: The Wild Card, Orchestrated Deception on the Path to War,* The Center for Public Integrity (Jan. 23, 2008).*
327 *Id.*, Overview, False Pretenses, paras. 1-2 (p. 1 if printed) (emphasis added).

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.'"[328] The report also noted that the number of false statements spiked from January 2003 to the eve of the invasion.[329]

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?[330]

H. Revelations by Former White House Press Secretary

In his recent book McClellan reveals that the deception alluded to in the book's title included the Bush Administration's "lack of *candor and honesty* in making the case for war."[331] McClellan accuses the Administration of "[s]elling [the] war through a political marketing campaign rather than *openly and forthrightly* discussing the possible need for war with the American people."[332] He further states that the Administration conducted a "political

---

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

329 *Id.* at para. 14 (pp. 2-3 if printed).

330 *Id.* at paras. 21-23 (p. 4 if printed).

331 McClellan, *What Happened: Inside the Bush White House and Washington's Culture of Deception*, *supra* note 8, at p. 125 (emphasis added).

332 *Id.* at p. 312 (emphasis added). McClellan uses the word 'campaign' rather than the word 'plan'. The word 'campaign' means "a connected series of operations *designed* to bring about a particular result." *Merriam Webster's Collegiate Dictionary* (10th Edition, 2000), p. 164 (emphasis added). A synonym for the word 'design' is the word 'plan'. *Id.* at p. 312.

propaganda campaign to sell the war to the American people."[333] He states that the Administration "vigorously [sought] to *manipulate* public approval … to sell the war",[334] and conducted a "carefully orchestrated campaign to *shape and manipulate sources of public approval*",[335] and to "*manipulat[e] sources of public opinion*."[336] McClellan states that the Bush Administration "perpetuated the endless investigations and scandals [it] vowed to move beyond by engaging in spin, stonewalling, hedging, *evasion*, denial, noncommunication, and *deceit by omission.*"[337]

McClellan reveals that President Bush's primary motivation for starting the war in Iraq was his "grand vision" to transform the Middle East into a "democratic Middle East."[338] However, as noted by McClellan, "[President] Bush and his advisers knew that the American people would almost certainly not support a war launched primarily for the ambitious purpose of transforming the Middle East."[339] Therefore "during the campaign for war, this transformational vision for the region was downplayed by both the president and other members of his administration …. [and i]nstead, they emphasized the threat of WMD and the possible link between Iraq and terrorism."[340] The "decision to downplay the democratic vision as a motive for war was basically a marketing choice."[341]

President Bush not only hid his real motives for the war but engaged in further deception by hiding the whole truth about the WMD claim. McClellan states that the Bush Administration rather that trying to get the American people to approve a war to transform the Middle East,

---

333 McClellan, *What Happened: Inside the Bush White House and Washington's Culture of Deception*, *supra* note 8, at p. 144.
334 *Id.* at p. 163 (emphasis added).
335 *Id.* at p. 125 (emphasis added).
336 *Id.* at p. 134 (emphasis added).
337 *Id.* at p. 229 (emphasis added).
338 *Id.* at p. 130.
339 *Id.* at p. 131.
340 *Id.* at p. 130.
341 *Id.* at p. 131.

> chose a different path – not employing out-and-out deception but *shading the truth*; downplaying the major reason for going to war and emphasizing a lesser motivation that could arguably be dealt with in other ways (such as intensified diplomatic pressure); *trying to make the WMD threat and the Iraqi connection to terrorism appear just a little more certain, a little less questionable, than they were; quietly ignoring or disregarding some of the crucial caveats in the intelligence and minimizing evidence that pointed in the opposite direction; using innuendo and implication to encourage Americans to believe as fact some things that were unclear and possibly false[,] … such as the idea that Saddam [Hussein] had an active nuclear weapons program*[,] … and other things that were overplayed or completely wrong[,] … such as implying Saddam might have an operational relationship with al Qaeda.[342]

When McClellan talks about how the Administration in its marketing campaign to sell the war in Iraq "shape[d] and manipulate[d] *sources* of public approval",[343] and "manipulate[d] *sources* of public opinion",[344] he was obviously referring to how the Administration kept from the public the above sources of information that weakened the Administration's claim that Iraq had WMDs.

President Bush's uranium claim in his January 28, 2003 State of the Union Address was the most notorious of the WMD claims. McClellan notes that President Bush first talked about Iraq's pursuit of chemical and biological weapons and its ties to terrorism; and then President Bush "briefly and ominously alluded to the greatest fear-provoking claim – that the regime was moving forward on an advanced nuclear weapons program."[345] President Bush then "uttered what would become known as 'the sixteen words' – his first personal reference to the Niger uranium claim: 'The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.'"[346] According to McClellan, those "sixteen

---

342 *Id.* at p. 132 (emphasis added). McClellan also states that he did "not believe [President Bush] or his White House *deliberately or consciously* sought to deceive the American people." *Id.* at p. 312 (emphasis added). However, the marketing campaign and manipulation that McClellan describes obviously shows that President Bush and the White House did have a plan of deception.

343 *Id.* at p. 125 (emphasis added).

344 *Id.* at p. 134 (emphasis added).

345 *Id.* at p. 5.

346 *Id.*

words would become the nexus of the controversy that delivered a near-fatal blow to the credibility of the president."[347]

According to McClellan, President Bush's uranium claim was an important part of his marketing campaign to sell the war in Iraq. As noted earlier, McClellan states:

> [President Bush's uranium] *claim remained in the public mind one of the most potent bits of evidence in the administration's case for war. After all, the threat of nuclear attack by Iraq seemed far more frightening to most Americans than the more remote danger of a chemical or biological attack on U.S. soil.* That is why the words of [the then] national security adviser Condoleezza Rice on September 8 [2002] had made headlines: "The problem here is that there will always be some uncertainty about how quickly [Hussein] can acquire nuclear weapons. *But we don't want the smoking gun to be a mushroom cloud*."[348]

It is important to look at the scenario of events noted earlier in this report and see how they affected the Administration's marketing campaign to sell the war that McClellan describes. President Bush and his officials made their uranium claims in January 2003 when after almost two months of inspections the UN weapons inspectors had found no weapons of mass destruction and there was a Congressional movement to repeal the war resolution or at least delay the start of the war to allow the UN weapons inspectors the time to finish their inspections.[349] President Bush and his officials resorted to the uranium claims because they

---

[347] *Id.*

[348] *Id.* at p. 6 (emphasis added).

[349] Concerning the Congressional movement to delay the war, as mentioned earlier, prior to the first uranium claim on January 20, 2003, Congresswoman Sheila Jackson Lee and four other Members of Congress on January 7 submitted House Concurrent Resolution 2, which expressed the sense of Congress that Congress should repeal the October 2002 Congressional war resolution in order to allow more time for the UN weapons inspections. *See supra* p. 46. 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." 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."

Also as mentioned earlier, on January 24, 2003, one hundred and thirty Members of Congress sent a letter to President Bush in which they 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. *See supra* p. 47. 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

realized that their marketing campaign to sell the war by manipulating sources of public approval and public opinion was severely damaged by the fact that it became public knowledge that the UN weapons inspectors had not found any weapons of mass destruction in Iraq, and thus they needed the uranium scare to revive their marketing campaign to sell the war.

A few months later the marketing campaign faced an even greater threat when on March 7 the UN's chief nuclear weapons inspector, ElBaradei, publicly declared that the documents behind the Administration's uranium claims were "not authentic" and also declared that the UN inspectors after "three months of intrusive inspections" had found no evidence of a nuclear weapons programme in Iraq.[350]

ElBaradei's statements drew a great deal of attention in the press.[351] Sixteen Members of Congress filed a resolution that condemned a pre-emptive strike against Iraq because Iraq was not an imminent threat.[352] Congressman Waxman wrote a letter to President Bush stating that he had voted for the war resolution but now was deeply disturbed at learning that the Administration's uranium claim was based on a hoax.[353] Congressman Kucinich filed a resolution that stated that the war resolution was null and void.[354]

President Bush realized that his marketing campaign to sell the war by manipulating sources of public opinion and public approval was damaged greatly by the fact that ElBaradei publicly stated that there was no evidence that Iraq had nuclear weapons but there was evidence that the documents behind the Administration's uranium claim were forgeries. The scare tactic

---

resolution 1441." The press release accompanying the UN report of January 27 stated that the weapons inspectors had found "no evidence that Iraq had revived its nuclear weapons program" and "no prohibited nuclear activities have been identified." *See supra* pp. 47-48. The press release concluded with the statement of the chief UN nuclear weapons inspector, ElBaradei, who pleaded to be allowed a few more months to finish the inspections since those "few months would be a valuable investment in peace because they could help us avoid a war."

350 *See supra* p. 57.

351 *See supra* pp. 57-58, 60-61.

352 *See supra* pp. 59-60.

353 *See supra* pp. 60-61.

354 *See supra* p. 62.

of the uranium claim that the Administration had resorted to in January backfired against the Administration in March.

Rather than allow Congress the time to absorb the facts that ElBaradei presented on March 7 and to consider repealing or modifying the Congressional war resolution because the UN inspections had now shown that Iraq was not an imminent threat, President Bush rushed the nation to war twelve days later on March 19. President Bush saw the writing on the wall. As Woodward noted in his book *Plan of Attack*, at a meeting on March 16 a few days before President Bush started the war: "[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.'"[355]

Thus President Bush actually started the war because he knew that he was about to lose the sale and he therefore had to force the sale on America by starting the war.

I. The Bush Justice Department's Refusals to Investigate or Appoint an Outside Special Counsel

It was a matter of public knowledge that the uranium claims were false but the Bush Justice Department refused to investigate or appoint an outside Special Counsel obviously because the Bush Justice Department often made decisions about who to prosecute based on political considerations.

Attempts were made to initiate an investigation. Congressman Maurice Hinchey, Congressman John Conyers, Jr., Congressman Nadler and thirty-seven other Members of Congress asked Fitzgerald in September 2005 to expand his investigation involving the leak of a CIA agent's name to include "the Administration's false and fraudulent claims in January 2003

[355] *See supra* p. 62.

that Iraq had sought uranium for a nuclear weapon."[356] 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 making false and fraudulent statements to Congress and obstructing the functions of Congress."[357] 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."[358]

Furthermore, in October 2005 Congressman 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.[359] Congressman Nadler cited as an example President Bush's uranium claim in his January 2003 State of the Union Address.[360]

The Justice Department, including Fitzgerald, did not investigate the above charges made by Members of Congress, nor did it appoint 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.[361] 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.[362] Fitzgerald further stated that he did not plan to seek such authority.[363] 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.

---

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

357 *Id.* at para. 2.

358 *Id.* at para. 10.

359 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.

360 *Id.* at para. 4, #3.

361 28 C.F.R. §§ 600.1-.3.

362 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.*

363 Letter from Fitzgerald to Hinchey, *supra* note 362, at para. 2. It is not clear whether the Justice Department

Also, the author submitted a 57 page memorandum dated January 28, 2006 to Fitzgerald asking him to investigate the five false and fraudulent uranium claims that the Bush Administration made in January 2003. (The author did not mention Vice President Cheney's July 2003 instruction to Libby to further disseminate the uranium claim as described in this report since that was not publicly known until Fitzgerald revealed it in April 2006.) In that memorandum the author cited the facts in the public record and the law showing that President Bush violated 18 U.S.C. § 1001 and that he and his officials violated 18 U.S.C. § 371. Although the author in his memorandum to Fitzgerald asked him to inform the author if he believed that he had no jurisdiction in the matter, Fitzgerald never responded to that memorandum. However, Fitzgerald's letter to Congressman Hinchey reveals that he would not investigate these matters.

Furthermore, the author submitted a 89 page memorandum to Attorney General John Ashcroft dated September 28, 2004 in which he requested the appointment of an outside Special Counsel under 28 C.F.R. §§ 600.1, 600.3 to investigate the five uranium claims that the Bush Administration made in January 2003. In that memorandum the author cited the facts in the public record and the law showing that President Bush violated 18 U.S.C. § 1001 and that he and his officials violated 18 U.S.C. § 371. The Justice Department never responded.

Also, the author in a 81 page memorandum to Attorney General Alberto Gonzales dated November 25, 2006 requested the Justice Department to appoint an outside Special Counsel under 28 C.F.R. §§ 600.1-.3 to investigate the false and fraudulent uranium claims that the Bush Administration made in January and July 2003 (substantially the same matters raised in this present report). Again, in that memorandum the author cited the facts in the public record and the law showing that President Bush violated 18 U.S.C. § 1001 and that he and his officials

---

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.

violated 18 U.S.C. § 371. The Justice Department basically ignored the request by telling the author that he must first submit the matter through the gate keeping channels of the FBI which would determine whether an investigation was warranted and a United States Attorney who would then make a final determination.[364] However, the Justice Department regulations concerning Special Counsels do not require or even imply that requests for Special Counsels be submitted to anyone other than the Attorney General.[365] As noted later, any United States Attorney who actually investigated President Bush would probably have been fired.[366]

Furthermore, the author submitted a similar 109 page report to Attorney General Michael Mukasey dated March 17, 2008 in which he requested the Justice Department to appoint an outside Special Counsel under 28 C.F.R. §§ 600.1-.3 to investigate the false and fraudulent uranium claims that the Bush Administration made in January and July 2003 (substantially the same matters raised in this present report). Again, in that report the author cited the facts in the

---

[364] A letter dated February 7, 2007 from the Criminal Division of the Justice Department to the author stated:

> Thank you for your recent to the Attorney General. I have been asked to respond to you on his behalf.
>
> We rely on investigative agencies to gather the relevant facts. If you believe this matter may constitute criminal activity, please contact the Federal Bureau of Investigation (FBI), the investigative arm of the Department of Justice. The FBI will determine whether a federal investigation may be warranted. If appropriate, the FBI will refer the matter to a United States Attorney for a final determination regarding legal action.
>
> Thank you for writing the Attorney General.

That letter was not signed nor provided the name of its author but merely stated "Sincerely, Correspondence Management Staff, Office of Administration".

[365] The letter ignored Justice Department regulations concerning the appointment of a Special Counsel. 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 Attomey 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.]

Thus the Justice Department regulations do not mention the FBI or a local United States Attorney's office as the gatekeeper for Special Counsel requests but state only that the matter be brought to the *attention* of the Attorney General who has an option of first having an investigation conducted, which can be by the Justice Department itself or the FBI.

[366] *See infra* pp. 76-78.

public record and the law showing that President Bush violated 18 U.S.C. § 1001 and that he and his officials violated 18 U.S.C. § 371. The Justice Department never responded.

The lack of an investigation of the Bush Administration's uranium claims was obviously due to the conflict of interest that the Bush Justice Department had in this matter. Justice Department regulation 28 C.F.R. § 45.2(a) states that unless there is a written waiver by a supervisor, no employee shall participate in a criminal investigation or prosecution if he or she 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.

Justice Department regulations that provide for the appointment of an outside Special Counsel should have been utilized. 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.]

Considering the overwhelming conflict of interest that any Justice Department employee, especially a Presidential appointee, would have in investigating their boss the President, the Bush Justice Department should have appointed an actual Special Counsel from outside the government to investigate these matters but refused to do so.[367] The obvious reasons why the

[367] 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

Bush Justice Department did not appoint such a Special Counsel were not only that the Bush Justice Department officials had an overwhelming conflict of interest but the Bush Justice Department was so politicized that Bush Justice Department officials certainly would have fired anyone who even raised the issue that there should be a criminal investigation of the nation's top Republican.

The report by the Justice Department's Office of the Inspector General, and Office of Professional Responsibility regarding the firing of nine United States Attorneys reveals the relative ease that the Bush Justice Department fired prosecutors who failed to promote the Republican Party's agenda.[368] That report states:

> Our investigation found significant evidence that *political partisan considerations* were an important factor in the removal of several of the U.S. Attorneys. The most troubling example was David Iglesias, the U.S. Attorney in New Mexico. We concluded that *complaints from New Mexico Republican politicians and party activists about Iglesias's handling of voter fraud and public corruption cases caused his removal,* and that the Department removed Iglesias without any inquiry into his handling of the cases.
>
> However, we were unable to fully develop the facts regarding the removal of Iglesias and several other U.S. Attorneys because of the refusal by certain key witnesses to be interviewed by us, as well as by the White House's decision not to provide internal White House documents to us.[369]

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).

[368] U.S. Department of Justice, Office of the Inspector General, and Office of Professional Responsibility, *An Investigation into the Removal of Nine U.S. Attorneys in 2006* (Sept. 2008).*

[369] *Id.* at pp. 325-326 (emphasis added).

Regarding Iglesias, the report starts that he "received pressure from the Republican Party of New Mexico to pursue voter fraud cases before the 2004 elections." *Id.* at p. 158. According to the report "many Republicans believed that fraudulent registration by Democratic Party voters in New Mexico was a widespread problem and that it had cost President Bush the state in the 2000 Presidential election." *Id.* The report states that the chairman of the state Republican Party sent Iglesias an email proposing that Iglesias's office become involved in "the party's voter fraud working group." *Id.* at pp. 158, 159.

Republicans also directly complained to Iglesias about not indicting before the November 2006 election a prominent Democrat in a public corruption case. Republican Congresswoman Heather Wilson called Iglesias in October 2006 and asked him if he was intentionally delaying public corruption prosecutions. *Id.* at pp. 177-178, 191. Iglesias concluded that Wilson was referring to the only publicly known corruption investigation, which was against a prominent Democrat in a case known as the courthouse case. *Id.* at pp. 168, 178, 191. Iglesias told Wilson that the accusation was not true. *Id.* at p. 178. She also asked him if delaying the release of sealed indictments rang any bells with him. *Id.* He responded that the practice of sealing indictments would not apply to public corruption cases. *Id.* Republican Senator Peter Domenici in October 2006 also called Iglesias and asked him if an indictment in the courthouse case (against the prominent Democrat) would be filed "before November", and when Iglesias said

The above report mentions that the Justice Department initially stated that the nine attorneys were removed as a result of performance evaluations but the report concludes that said statements by the Justice Department officials were "inconsistent, misleading, and inaccurate in many respects" and that Department officials "fail[ed] to provide accurate and truthful statements about the removals and their role in the process."[370]

The above report concluded with the recommendation that the Justice Department appoint a counsel to continue the investigation and to determine whether any crimes were committed regarding the removal of the nine U.S. Attorneys and the related testimony on the matter.[371] Although Attorney General Michael Mukasey in response to the report assigned a U.S. Attorney to further investigate the matter, Chairman John Conyers of the House Committee on the Judiciary questioned whether that U.S. Attorney was truly independent and he raised the issue that the Bush Justice Department could have a conflict of interest.[372]

Another more recent report by the Justice Department's Office of the Inspector General, and Office of Professional Responsibility states that Bradley Schlosman, the former acting head of the Justice Department's Civil Rights Division, "made false statements to the Senate Judiciary Committee, both in his sworn testimony and in his written responses to … supplemental questions" regarding "whether he considered political and ideological affiliations" when making

---

he did not think so then Senator Domenici said he was sorry to hear that and hung up. *Id.* at pp. 179, 191. Although Justice Department regulations required Iglesias to report the above two phone calls to the Justice Department, he did not report the matters at that time. *Id.* at p. 194.

There were other complaints from Republicans to the Justice Department and to the White House about Iglesias's handing of the above cases. *Id.* at pp. 165-166, 170-174. More specifically Senator Domenici complained about Iglesias to Attorney General Alberto Gonzales and to Deputy Attorney General Paul McNulty. *Id.* at pp. 168-170, 174-175.

The above report concludes that the Justice Department fired Iglesias based on complaints from Republicans to the Justice Department and to the White House about Iglesias's handling of the above cases. *Id.* at p. 192, 325-326. The report concludes that Senator Domenici's complaints were the primary factor in the Justice Department's firing of Iglesias. *Id.* at 192.

370 *Id.* at p. 357.

371 *Id.* at p. 358.

372 *See* Letter from John Conyers, Jr., Chairman, House Committee on the Judiciary, to The Honorable Michael B. Mukasey (Oct. 6, 2008).*

decisions about hiring or transferring career (non political) attorneys.[373] The authors of the report in March 2008 referred the matter to the U.S. Attorneys Office for the District of Columbia to decide whether the evidence warranted a criminal prosecution.[374] On January 9, 2009 that United States Attorney's office informed the authors of the report that it was declining to prosecute Schlosman, and the authors of the report then publicly released their report.[375]

Thus the Bush Justice Department was politicized and practiced selective prosecution, and it would not have selected to prosecute the nation's top Republican. At a Congressional hearing in 2007 on selective prosecution, 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.[376] The House Judiciary Committee Majority Staff has issued reports concerning allegations of selective prosecution at the Bush Justice Department.[377]

Thus no federal prosecutor in the Bush Justice Department decided to prosecute President Bush and said officials because the Bush Justice Department would have fired that prosecutor although the Department would have offered a false reason for the firing.[378]

---

[373] U.S. Department of Justice, Office of the Inspector General, and Office of Professional Responsibility, *An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division* (July 2, 2008, released publicly on Jan. 13, 2009), pp. 53, 64.*

[374] *Id.* at pp. 1, 63.

[375] *Id.* at p. 1.

[376] 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) (written statement presented at Joint Hearing on Allegations of Selective Prosecution: The Erosion of Public Confidence in Our Federal Justice System, United States House of Representatives Committee on the Judiciary, Oct. 23, 2007), pp. 5, 4, 42.*

[377] *See* House Committee on the Judiciary Majority Staff, 111th Cong., *Reining in the Imperial Presidency* (2009), pp. 50-54;* House Committee on the Judiciary Majority Staff, 110th Cong., *Allegations of Selective Prosecution in Our Federal Criminal Justice System* (2008).*

[378] As mentioned earlier, the Justice Department did assign Fitzgerald to investigate the leak of the name of a CIA agent but President Bush commuted Libby's sentence on the matters for which he was convicted and thus as a practical matter President Bush negated that prosecution. *See supra* p. 12.

III. THE CRIMINAL LAW VIOLATIONS

A. Preliminary Matters Including the Statute of Limitations

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.[379]

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 …"[380]

Also, the standard of proof for an indictment by a grand jury 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.[381] 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."[382]

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.[383] Obviously a grand jury should subpoena President Bush, Vice President Cheney, Rice, Powell, Rumsfeld, Libby, McClellan, Wolfowitz, Hadley, Card, Calio, Tenet, Miscik, Gibson, Gerson, Joseph, Gonzales, Schmall, all the members of the NSC and WHIG, and ElBaradei, to testify and to

---

379 *United States v. Vesterso*, 828 F.2d 1234, 1243 (8th Cir. 1987) (citations and citation marks omitted).
380 *United States v. Gillock*, 445 U.S. 360, 372 (1980) (citation and citation marks omitted).
381 *Branzburg v. Hayes*, 408 U.S. 665, 686 (1972).
382 *United States v. Patane*, 304 F.3d 1013, 1018 (10th Cir. 2002).
383 Fed. R. Evid. 802, 1101(d)(2).

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.

Concerning the five-year statute of limitations, 18 U.S.C. § 3282(a), at first it appears that the five years has already run concerning the crimes mentioned in this report. Regarding President Bush's violations of 18 U.S.C. § 1001, he made his last statement more than five years ago on January 28, 2003. Concerning the violations of the conspiracy statute, 18 U.S.C. § 371, 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 more than five years ago on July 22, 2003 when the White House publicly mentioned the warnings that the CIA sent to the White House in October 2002.

However, as further explained herein, under the legal doctrine of equitable tolling the statute of limitations should be considered tolled because President Bush controlled the Justice Department that shielded him and the above Administration officials from prosecution. Under that legal doctrine the five years in the statute of limitations did not begin to run until the day that President Bush left office or there is now, since President Bush left office, a reasonable period of time to bring an indictment against him and said officials. Under the related legal doctrine of equitable estoppel President Bush is estopped or prevented from raising the statute of limitations.

In *Day v. McDonough*, the Supreme Court stated that a statute of limitations is a "defense", and the Court described that defense as an "affirmative defense."[384] Statutes of limitations are affirmative defenses, and can be waived.[385]

---

384 *Day v. McDonough*, 547 U.S. 198, 205, 208 (2006).

385 "A statute of limitations defense is a waivable affirmative defense, not a jurisdictional bar to prosecution. Failure to raise the defense in a timely manner can result in its waiver." *United States v. Spector*, 55 F.3d 22, 24 (1st Cir. 1995) (internal citation omitted). "Statutes of limitation … are an affirmative defense that must be raised by the defendant …. [and] a statute of limitations defense is forfeited if not raised at the trial itself." *United States v. Ross*, 77 F.3d 1525, 1536 (7th Cir. 1996) (internal citations omitted). "Failure to comply with the statute of limitations … is an affirmative defense which the defendant waives if not raised at trial." *United States v. Lo*, 231 F.3d 471, 480

As defenses, statutes of limitations are not jurisdictional matters. In *Day v. McDonough*, the Supreme Court stated that a statute of limitations is "not jurisdictional."[386] The Court of Appeals for the District of Columbia Circuit has stated: "[T]he settled law in our circuit has been that a criminal statute of limitations is not jurisdictional in nature and therefore can be waived."[387] That Court of Appeals has also stated: "In *Irwin v. Department of Veterans Affairs*, … the Supreme Court held that statutes of limitations are not jurisdictional."[388]

In *Irwin v. Department of Veterans Affairs*, the District Court had ruled that the lawsuit in the case had been filed past the 30-day statutory limit for filing such a lawsuit and therefore the court dismissed the case based on lack of jurisdiction.[389] The Court of Appeals affirmed, holding that the 30-day statutory limit for filing the lawsuit operated as an "absolute jurisdictional limit" and therefore the District Court "lacked jurisdiction over … [the] untimely complaint."[390] The Supreme Court granted certiorari to resolve "whether late-filed claims are jurisdictionally barred."[391] The Court, in ruling that late-filed lawsuits are not jurisdictionally barred, stated:

> Time requirements in lawsuits between private litigants are customarily subject to equitable tolling….
>
> We … hold that the same *rebuttable presumption of equitable tolling* applicable to suits against private defendants should also apply to suits against the United States. *Congress, of course, may provide otherwise if it wishes to do so*….
>
> We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass….
>
> But the principles of equitable tolling … do not extend to … garden variety claim[s] of excusable neglect. [392]

(9th Cir. 2000).

386 *Day v. McDonough, supra*, 547 U.S. at 205 (internal citation marks omitted).

387 *United States v. Wilson*, 26 F.3d 142, 155 (D.C. Cir. 1994).

388 *Norman v. United States*, 467 F.3d 773, 775 (D.C. Cir. 2006) (citing *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 93-96 (1990)).

389 *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 91 (1990).

390 *Id.* at pp. 91-92.

391 *Id.* at p. 92.

392 *Id.* at pp. 95-96 (internal citation marks and footnotes omitted, emphasis added). The Court ruled that the facts in the case did not meet the criteria for equitable tolling. *Id.* at p. 96.

In *United States v. Brockamp* the Supreme Court stated: "Ordinarily limitations statutes use fairly simple language, which one can often plausibly read as containing an implied equitable tolling exception."[393] In *Young v. United States*, the Supreme Court stated: "It is hornbook *law* that limitations periods are customarily subject to equitable tolling, unless tolling would be inconsistent with the text of the relevant statutes."[394]

The criminal statute of limitations for non capital offenses, 18 U.S.C. § 3282(a), states: "In general. *Except as otherwise expressly provided by law*, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed." [Emphasis added.] The term 'law' means: "The *aggregate of legislation, judicial precedents, and accepted legal principles*; the body of authoritative grounds of judicial and administrative action; esp., the body of rules, standards, and principles that the courts of a particular jurisdiction apply in deciding controversies brought before them."[395]

Since the above statute of limitations, 18 U.S.C. § 3282(a), allows for "[e]xcept[ions] … expressly provided by law", and since *Irwin v. Department of Veterans Affairs*, *Young v. United States*, and the following other *case law* expressly provide for such exceptions in the form of the legal doctrines of equitable tolling and equitable estoppel, then that statute of limitations does not preclude indictments and prosecutions beyond the five years in the statute when so warranted by said legal doctrines. There is nothing in the text of that statute that is inconsistent with tolling or estoppel, and thus the statute is subject to the law of equitable tolling and equitable estoppel.

---

393 *United States v. Brockamp*, 519 U.S. 347, 350 (1997) (internal citation marks omitted). This case is further discussed later. *See infra* note 399.

394 *Young v. United States*, 535 U.S. 43, 49 (2002) (internal citation and citation marks omitted, emphasis added).

395 *Black's Law Dictionary* (8th Edition, 2004), p. 900 (emphasis added).

The term 'law' has been defined as: "[A] binding custom or practice of a community : a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority … [,] the whole body of such customs, practices, or rules." *Merriam Webster's Collegiate Dictionary* (10th Edition, 2000), p. 658.

Furthermore, another part of the statute of limitations, 18 U.S.C. § 3282, was amended in 2003 at which time there existed the body of case law on equitable tolling and equitable estoppel, and it is presumed that Congress was aware of that law at that time but chose not to change the statute to preclude equitable tolling and equitable estoppel.[396] The Supreme Court has stated: "We generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts."[397] The Supreme Court in *Young v. United States* not only noted that statutes of limitation are customarily subject to equitable tolling not mentioned in the statutes, but further stated: "Congress must be presumed to draft limitations periods in light of this background principle [on equitable tolling]."[398] Thus it should be presumed that Congress was aware of the law on equitable tolling and equitable estoppel in 2003 but chose not to change it.[399]

---

396 The statute was amended on April 30, 2003 to provide for an "[e]xception" to the statute in the situation where an indictment filed within five years of a sexual abuse offense does not contain the identity of an unknown accused but does cite a particular DNA profile. 18 U.S.C. § 3282(b), Pub. L. No. 108-21, 117 Stat. 692.

397 *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-185 (1988).

398 *Young v. United States*, *supra*, 535 U.S. at 49-50.

399 It should be noted that not only is there an exception listed in 18 U.S.C. § 3282(b) involving DNA profiles, *see supra* note 396, but other statutes in the United States Code provide for the suspension of the above statute of limitations and provide for what might be described as exceptions. *See* 18 U.S.C. § 3287 (during the time of war the statute of limitations is suspended for certain crimes until three years after hostilities end); 18 U.S.C. § 3292 (when the United States seeks to obtain foreign evidence the statute of limitations can be suspended); 18 U.S.C. § 3290 (statute of limitations does not extend to any person during the time that person is a fugitive from justice); 18 U.S.C. § 3297 (in a case in which DNA testing implicates an identified person, the statute of limitations does not begin to run at the time of the offense but at the time of such implication); 18 U.S.C. §§ 3288, 3289, 3296 (when a timely filed indictment is dismissed, a new indictment can be filed beyond the statute of limitations under certain circumstances). The above statute of limitations, 18 U.S.C. § 3282, was among other statutes, 18 U.S.C. § 3281 to 18 U.S.C. § 3290, that were enacted in 1948 as part of the codification of criminal law and were set forth in the chapter of that codification entitled Limitations. *See* June 25, 1948, ch. 645, 62 Stat. 827-829.

There is a canon of statutory construction that when a legislative Act contains specific exceptions to its application, then there should be a presumption that the legislature intended to preclude other exceptions, but that presumption is not valid if there is evidence of a contrary legislative intent. "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of *evidence of a contrary legislative intent.*" *TRW Inc. v. Andrews*, 534 U.S. 19, 28 (2001) (citation and citation marks omitted, emphasis added). "At best, … the canon that expressing one item of a commonly associated group or series excludes another left unmentioned is only a guide, whose fallibility can be shown by *contrary indications* that adopting a particular rule or statute was probably not meant to signal any exclusion of its common relatives." *United States v. Vonn*, 535 U.S. 55, 65 (2002) (emphasis added). In a case involving a statute of limitations, the Supreme Court applied this canon of statutory construction, stating:

> Ordinarily limitations statutes use fairly simple language, which one can often plausibly read as containing an implied 'equitable tolling' exception….
>
> [However, the statute's] detail, its technical language, the iteration of the limitations … and the explicit listing of exceptions, taken together, indicate to us that Congress did not intend

courts to read other unmentioned, open-ended, 'equitable' exceptions into the statute that it wrote.

There are no counterindications [supporting other exceptions].

United States v. Brockamp, supra 519 U.S. at 350, 352 (emphasis added).

Thus at first it might appear that the above-mentioned exception in 18 U.S.C. § 3282(b) involving DNA profiles precludes other exceptions. However, there is the contrary legislative intent and counterindication shown in the previous language in the statute that states that the statute allows for "[e]xcept[ions] … expressly provided by law". As mentioned above, that law includes not only statutes, such as the above statutes, 18 U.S.C. §§ 3287-3290, 3292, 3296, 3297, but also case law where exceptions such as equitable estoppel and equitable tolling are expressed.

Also many of the above mentioned statutes concerning limitations and containing exceptions were all enacted in the same legislative Act in 1948, and it might be argued that Congress by listing such exceptions precluded other exceptions not stated. However, as noted in *United States v. Brockamp, supra* 519 U.S. at 350-352, even when a statute contains explicit exceptions, a court must finally consider whether the statute has any counterindications that contradict the premise that the explicit exceptions were meant to be the only exceptions allowed. The wording in the above statute of limitations, 18 U.S.C. § 3282, is contrary to any premise that the exceptions listed in statutes enacted as part of the same legislative Act were meant to be exclusive. The statute allows for "[e]xcept[ions] … expressly provided by law", and that language is specific and does not limit the exceptions to those provided in statutes only but the term 'law' includes exceptions provided in case law. Again it should be noted that Congress amended the present statute of limitations, 18 U.S.C. § 3282, in 2003 at which time there existed the body of case law on equitable tolling and equitable estoppel but Congress did not change the statute to state that any exceptions were limited to the exceptions provided in the surrounding statutes but kept the wording that the exceptions were those provided by law. *See* 18 U.S.C. § 3282(b), Pub. L. No. 108-21, 117 Stat. 692.

Furthermore, the above wording in the statute recognizing exceptions provided by "law" cannot be ignored. "It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant. It is our duty to give effect, if possible, to every clause and word of a statute." *TRW Inc. v. Andrews, supra*, 534 U.S. at 31 (internal citations and citation marks omitted). In that case the Court reviewed a statute of limitations, 15 U.S.C. § 1681p, which at the time stated that the action in question may be brought "within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this title to be disclosed to an individual …, the action may be brought at any time within two years after discovery by the individual of the misrepresentation." *TRW Inc. v. Andrews, supra*, 534 U.S. at 22, 15 U.S.C. § 1681p (statute in effect prior to 3/31/2004 amendment). *The statute contained no other wording implying any other exception, such as wording 'except as otherwise expressly provided by law'.* The Court ruled that the wording of the exception in the statute showed a legislative intent not to allow other unstated exceptions since the exception that that was proposed but that was not stated in the statute would make the exception that was stated superfluous. *TRW Inc. v. Andrews, supra*, 534 U.S. at 28-33. In the present case, there is the wording allowing for "[e]xcept[ions] … expressly provided by law", and that wording can not be considered superfluous and the exceptions recognized under that law must be given effect in addition to the exceptions also mentioned in the related statutes.

Also, the words in a statute must be given their ordinary meaning. "Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Engine Mfrs. Assn. v. South Coast Air Quality Management District*, 541 U.S. 246, 252 (2004) (citation and citation marks omitted). The definition of words can be found in dictionaries. *Id.* at 252-253. The wording in 18 U.S.C. § 3282(a) allows for exceptions "provided by law" and as mentioned above the word 'law' means the "aggregate of legislation, *judicial precedents*, and accepted legal principles." *Black's Law Dictionary, supra*, p. 900 (emphasis added). The meaning of the word 'law' is not limited to the part of the law containing legislation but includes judicial precedents and case law. When Congress wants to limit exceptions to just those mentioned in statutes Congress uses the phrase "except as otherwise provided by statute" as it does in 5 U.S.C. §§ 556(d), 5502(b), 8116(b); 22 U.S.C. § 4056(j)(1); Fed. R. Crim. P. 6(g); Fed. R. Civ. P. 81(a)(3). Thus the terms 'provided by law' and 'provided by statute' have different meanings and in 18 U.S.C. § 3282(a) the term "provided by law" includes exceptions mentioned in case law. (However, there are state cases that hold that the term 'provided by law' refers to statutes. *See* 34B Words And Phrases, *Provided By Law* (2006)).

There are some statutes where it is clear from the statute's language that any exceptions are limited to exceptions in other specific statutes. For example, the law allowing lawsuits against the United States, 28 U.S.C. § 2401(a), states: "Except as provided by the Contract Disputes Act of 1978, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." It is clear from the statute's language that the exceptions are only those provided in the said Act and in no other place.

The Third Circuit Court of Appeals in *United States v. Midgley* stated that the legal doctrine of equitable tolling allows statutes of limitations in criminal cases to be tolled when "an adversary's misconduct" was the cause for the filing deadline to pass, or when 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."[400] The court stated: "Although the doctrine of equitable tolling is most typically applied to limitation periods on civil actions, *see Irwin*, 498 U.S. at 95, *there is no reason to distinguish between the rights protected by criminal and civil statutes of limitations.*"[401]

The Third Circuit in *United States v. Stansfield* stated: "In *Midgley*, this court stated that criminal statutes of limitations may be subject to tolling, suspension, and waiver where … the defendant has actively misled the plaintiff, … [or] if the plaintiff has 'in some extraordinary way' been prevented from asserting his rights."[402]

Also, there are some statutes where it is clear that any exceptions are limited to the exceptions mentioned in the very statute. For example, the statute for filing notices of appeal in civil matters, 28 U.S.C. § 2107(a), states: "*Except as otherwise provided in this section*, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree." [Emphasis added.] Since that statute in a subsection provided for certain exceptions then it precluded other exceptions not mentioned in the statute. *See Bowles v. Russell*, 551 U.S. __, 127 S.Ct. 2360, 2362-2363, 2366-2367 (2007). Furthermore, in *Bowles* the Court stated that since the statute concerned Congressional authorization for courts to hear appeals, which are among the matters that require Congressional authorization in order to even exist, then the statute was jurisdictional. *Bowles*, *supra*, 127 S.Ct. at 2365-2366. The Court further stated: "Today we make clear that the timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Id.* at 2366. The Court further stated: "[I]t is indisputable that time limits for filing a notice of appeal have been treated as jurisdictional in American law for well over a century." *Id.* at pp. 2363-2364, note 2. The Court did not discuss statutes of limitations in criminal cases. However, as noted above the Supreme Court and other courts have repeatedly stated that statutes of limitations are affirmative defenses and are not jurisdictional. *See Day v. McDonough*, *supra*, 547 U.S. at 205, 208; *United States v. Spector*, *supra*, 55 F.3d at 24; *United States v. Ross*, *supra* 77 F.3d at 1536; *United States v. Lo*, *supra*, 231 F.3d at 480; *Irwin*, *supra*, 498 U.S. at 92-96; *United States v. Wilson*, *supra* 26 F.3d at 155; *Norman v. United States*, *supra*, 467 F.3d at 775.

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

[401] *Id.* at 179 (citation and internal citation marks omitted, emphasis added). In *Midgley*, the government dismissed certain counts of an indictment but then sought to reinstate those counts after the five years in the statute of limitations had expired and after the defendant, taking advantage of a new Supreme Court case, challenged the count in the indictment to which he plead guilty. *Id.* at 175-176. The court ruled that although the government acted with diligence and was without fault, the situation did not warrant equitable tolling of the statute of limitations since there was no extraordinary interference with the government's ability to assert its rights. *Id.* at 179.

[402] *United States v. Stansfield*, 171 F.3d 806, 814, n 6 (3d Cir. 1999). In that case the court ruled that equitable tolling was not warranted because the "defendant at not time misled the Government or prevented it from asserting

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 limitation 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."[403]

There is the similar doctrine of equitable estoppel that also applies to statutes of limitations and 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:

> 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 the 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.[404]

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.[405] The plaintiff appealed claiming that the employer's statements to the plaintiff implying that he would be reinstated pursuant to a collateral review of the matter constituted equitable estoppel.[406] The Court of Appeals held that an employer's misleading statements that a collateral review would be

---

its rights." *Id.* at 814. The Third Circuit further recognized that equitable tolling can apply to criminal statutes of limitations in the case of *United States v. Atiyeh*, 402 F.3d 354, 367 (3d Cir. 2005).

It should be noted that the legal encyclopedia *Corpus Juris Secundum* states that as a general rule exceptions will not be implied to statutes of limitations for criminal offenses, and unless a statute of limitations contains an exception that will toll its operation, the running of it will not be tolled. 22 C.J.S. *Criminal Law* § 258 (2006). Only two state cases are cited as authority, and the above cases of *United States v. Midgley*, *United States v. Stansfield*, and *United States v. Atiyeh*, are not discussed. Furthermore as mentioned above, the federal statute of limitations allows for "[e]xcept[ions] … expressly provided by law." 18 U.S.C. § 3282(a). That law includes case law.

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

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

405 *Id.* at 1364-1365.

406 *Id.* at 1365-1368.

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*."[407] Since the plaintiff alleged such a scenario the Court of Appeals reversed the lower court's summary judgment on the matter.[408]

In *Chung v. U.S. Department of Justice*, the Court of Appeals for the District of Columbia Circuit stated:

> We have previously pointed out that the two doctrines [of equitable estoppel and equitable tolling], although functionally similar, 'have distinct criteria' – the former revolving around the conduct of the defendant and the latter around the circumstances of the plaintiff. There is a difference in effect as well: Equitable estoppel takes the statute of limitations our of play for as long is necessary to prevent the defendant from *benefiting from his misconduct*, whilst equitable tolling – as a method for adjusting the rights of two 'innocent parties' – merely ensures that the *plaintiff is not, by dint of circumstances beyond his control, deprived of a 'reasonable time' in which to file suit.…* The purposes of the doctrine … of equitable tolling … are fully achieved if the court extends the time for filing by a *reasonable period* after the tolling circumstance is mended.[409]

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.[410] However, the Court of Appeals after noting that the plaintiff had entered a guilty plea in a federal case that required his full cooperation with the Justice Department in order to get it's recommendation for leniency, 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.[411] The court reversed the lower court's dismissal and remanded the

---

407 *Id.* at 1368 (emphasis added).

408 *Id.* at 1368-1369.

409 *Chung v. U.S. Department of Justice*, 333 F.3d 273, 278-279 (D.C. Cir. 2003) (internal citations and citation marks omitted, emphasis added).

410 *Id.* at 274-275.

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

case for further consideration.[412] Thus the court held that *fear of the consequences* of filing an action within the time limits of a statute of limitations may constitute grounds for the tolling of that statute of limitations.

More recently, in 2007 the Court of Appeals for the District of Columbia Circuit in *Jankovic v. International Crisis Group* stated:

> A defendant who engages in '*inequitable conduct*' can be equitably estopped from invoking the statute of limitations….
>
> The similar doctrine of equitable tolling does not concern the conduct of the defendant but rather applies when the plaintiff despite all *due diligence* is unable to obtain vital information bearing on the existence of his claim.[413]

The District Court for the District of Columbia has stated: "[N]umerous other cases addressing claims for equitable tolling and equitable estoppel emphasize that the *core purpose* of both doctrines is to prevent a *plaintiff from being disadvantaged by the expiration of the limitations period when it ran through no fault of his or her own.*"[414]

Furthermore, there is the equitable tolling doctrine of adverse domination that allows for the suspension of a statute of limitations in situations where a plaintiff corporation (and as the author contends a similar entity) failed to file a lawsuit in time because wrongdoers controlled

---

412 *Id.* at 279-280.

413 *Jankovic v. International Crisis Group*, 494 F.3d 1080, 1086 (D.C. Cir. 2007) (internal citations and citation marks omitted, emphasis added).

414 *Dove v. Washington Metropolitan Area Transit*, 402 F.Supp.2d 91, 98 (D.D.C. 2005) (emphasis added).

The District Court for the District of Columbia in 2008 stated: "Statutory time limits are jurisdictional in nature, and courts do not have the power to create equitable exceptions to them. *Bowles v. Russell*, _ U.S. _, 127 S.Ct. 2360, 2366 (2007)." *Menominee Indian Tribe of Wisconsin v. U.S.*, 539 F.Supp.2d 152, 154 (D.D.C. 2008). However, the statute in that case, 41 U.S.C. § 605(a), was similar to the statute in *Bowles* and did not provide for any exceptions recognized by the law in general. *See supra* note 399. The present statute of limitations, 18 U.S.C. § 3282(a), provides for exceptions since it states: "*Except as otherwise expressly provided by law*, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed." [Emphasis added.] As noted above, the *case law* provides for the tolling or suspension of statutes of limitations, and the case law also holds that statutes of limitations are not jurisdictional. *Supra* pp. 80-88. Also, the above mentioned Court of Appeals case of *Jankovic v. International Crisis Group*, *supra*, 494 F.3d at 1086, which explained the law on equitable estoppel and equitable tolling, was decided after *Bowles v. Russell*, and thus is the law of the District of Columbia and that law still recognizes equitable estoppel and equitable tolling. Also cases in the District Court in the District of Columbia decided after *Menominee Indian Tribe of Wisconsin v. U.S.*, *supra*, still recognized equitable estoppel and equitable tolling as the law of the District of Columbia. *See Strong-Fisher v. Peters*, 554 F.Supp.2d 19, 23-25 (D.D.C. 2008); *Hewitt v. Rice*, 560 F.Supp.2d 61, 64-66 (D.D.C. 2008); *Thomas v. Nicholson*, 561 F.Supp.2d 1, 6 (D.D.C. 2008).

that corporation or entity. The District Court for the District of Columbia in *Resolution Trust Corporation v. Gardner* ruled:

> [T]he equitable doctrine known as 'adverse domination' …. has been widely applied in other federal courts. Under the doctrine, a *cause of action will be tolled during the period that a plaintiff corporation is controlled by wrongdoers.* Tolling is considered appropriate because where culpable directors and officers control a corporation, they are unlikely to initiate actions or investigations for fear that such actions will reveal their own wrongdoing….
>
> [T]he court shall adopt the equitable tolling doctrine of adverse domination, because while no cases address it in this jurisdiction, the Court is persuaded by the many cases in various federal jurisdictions which adopt it. [415]

In the above case, the plaintiff was the Resolution Trust Corporation that was a conservator and receiver for a failed savings and loan (the Lincoln Savings & Loan, and a subsidiary), and the RTC brought suit to recover improper payments that the failed savings and loan had given to an attorney who allegedly had performed no legal services warranting such payments.[416] The defendant at times acted as an attorney for the failed savings and loan but the RTC alleged that the improper payments were not for any legal services that he provided.[417] The defendant was not a director, officer or employee of the failed savings and loan.[418]

The defendant in a motion for summary judgment raised a three year statute of limitations as a defense.[419] The RTC argued that the three years should be tolled under the equitable tolling doctrine of adverse domination since the failed savings and loan that could have brought the lawsuit within the three years had been controlled by various wrongdoers, including Charles Keating who although he never held any official title or office at the savings and loan had directed that said alleged improper payments be made to the defendant.[420] The defendant argued

---

415 *Resolution Trust Corporation v. Gardner*, 798 F.Supp. 790, 794-795 (D.D.C. 1992) (internal citations omitted, emphasis added).

416 *Id.* at 791-792.

417 *Id.* at 792, 793, 796.

418 *Id.* at 792, 793, 795.

419 *Id.* at 791, 794.

420 *Id.* at 792, 794-795.

that the doctrine of adverse domination was not applicable because it only applied when a party raising the defense of the statute of limitations was an officer or director who controlled the plaintiff corporation, and the defendant claimed that he was not such an officer or director.[421]

The court ruled: "[The] defendant attempts to unduly restrict the reach of the adverse domination doctrine. Contrary to defendant's contention, the doctrine has been applied in cases involving defendants who were neither officers nor directors of the corporation [but who were either an accountant, attorney, stockbroker, lower level employee, or outside law firm]."[422]

The court denied the defendant's motion of summary judgment, finding that the statute of limitations was tolled under the equitable tolling doctrine of adverse domination because the failed savings and loan, which the plaintiff RTC was the receiver for, had been "controlled by wrongdoers during all relevant time periods."[423] The court did *not* identify the defendant as one of the wrongdoers who controlled the failed savings and loan.[424] The court stated: "The defendant has made no real effort to dispute that the corporations [the failed savings and loan and its subsidiary] were not in a position to sue [the defendant] without casting possible light upon their own wrongdoing. [The savings and loan and its subsidiary] were not in a position to protect their own interest."[425]

The District Court for the District of Columbia in another case stated: "Under [the] theory [of adverse domination], a cause of action will be tolled during the period that a plaintiff corporation is controlled by wrongdoers…. [T]he statute [of limitations] is tolled while a corporate plaintiff continues under the domination of the wrongdoers."[426]

---

421 *Id.* at 795.
422 *Id.*
423 *Id.*
424 *Id.* at 792-793, 795-796.
425 *Id.* at 796.
426 *BCCI Holdings (Luxembourg), S.A. v. Clifford*, 964 F.Supp. 468, 481 (D.D.C. 1997) (internal citations and citation marks omitted).

Thus the District Court for the District of Columbia has adopted the equitable tolling doctrine of adverse domination and ruled that it applies to situations where the plaintiff is a receiver for an entity that was controlled by wrongdoers, and the plaintiff brings an action on behalf of that entity against a defendant who was not an officer or director of that entity and who was not one of the wrongdoers who controlled that entity. There surely is no reason to limit the application of the adverse domination doctrine just to corporations and that doctrine should be applied to similar entities such as agencies and government entities that have the capacity to bring legal actions.

The crimes of President Bush and his said officials concerning the false and fraudulent uranium claims were a matter of public knowledge but the Bush Justice Department refused to investigate. Fitzgerald, who was a Justice Department employee, denied the request of Congressman Hinchey, Congressman Conyers, Congressman Nadler and thirty-seven other Members of Congress for an investigation by stating that he did not have the authority to conduct the investigation. Fitzgerald probably consulted with his superiors at the Justice Department before he told the Members of Congress that he had no authority. The Justice Department rejected Congressman Nadler's additional request for an investigation. The Justice Department rejected the author's three requests for the appointment of an outside Special Counsel to investigate the matter. Those requests were in the form of lengthy reports and memorandums in which the author cited the facts in the public record and the law showing that President Bush violated 18 U.S.C. § 1001 and that he and his officials violated 18 U.S.C. § 371.

The above requests for investigations were not only denied but in light of the above mentioned report by the Justice Department's Office of the Inspector General regarding the

firing of federal prosecutors,[427] it is absolutely clear that any federal prosecutor who attempted to investigate or prosecute President Bush and other high officials for the crimes mentioned herein would have been fired. Obviously the Justice Department again would have provided false reasons for the firings to cover the true reasons as it did regarding the firings of the nine U.S. Attorneys. Also as mentioned earlier, a report introduced at a Congressional hearing on selective prosecution 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.[428] The House Judiciary Committee Majority Staff has issued reports concerning allegations of selective prosecution at the Bush Justice Department.[429] The Bush Justice Department refused to prosecute Schlosman even though he made false statements to the Senate Judiciary Committee.[430] Thus it is clear that the Bush Justice Department was extremely politicized and that politicization included shielding Republicans from prosecution.

Both the doctrines of equitable tolling and equitable estoppel would prevent President Bush and said officials from successfully raising the statute of limitations as a defense.

Regarding equitable tolling, which applies to President Bush and all the said officials, as mentioned above, parties that seek to utilize the law of equitable tolling must show that they exercised due diligence in trying to bring an action within the original time limits in a statute of

---

[427] U.S. Department of Justice, Office of the Inspector General, and Office of Professional Responsibility, *An Investigation into the Removal of Nine U.S. Attorneys in 2006*, *supra* note 368.

[428] Shields, *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, supra* note 376, at pp. 5, 4, 42.

[429] House Committee on the Judiciary Majority Staff, *Reining in the Imperial Presidency*, *supra* note 377, at pp. 50-54; House Committee on the Judiciary Majority Staff, *Allegations of Selective Prosecution in Our Federal Criminal Justice System*, *supra* note 377.

[430] U.S. Department of Justice, Office of the Inspector General, and Office of Professional Responsibility, *An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division*, *supra* note 373, at pp. 1, 53, 63, 64.

limitations, but due to circumstances beyond their control and through no fault of their own they were deprived of a reasonable time in which to file the action,[431] or they must show that in some extraordinary way they were prevented from exercising their rights to file an action.[432] Under the equitable tolling doctrine of adverse domination a statute of limitations can be suspended when the plaintiff was controlled or dominated by wrongdoers.[433] That equitable doctrine should be applied not just to corporations but also to similar entities such as agencies and government entities that have the capacity to bring legal actions.

Certainly the above mentioned requests for investigations made by Members of Congress and the author constitute due diligence on the part of those seeking to bring criminal actions against President Bush and said officials within the five years in the statute of limitations.[434] The circumstances of President Bush controlling the Justice Department and that Department shielding him and others from prosecution were circumstances beyond the control of those who sought a criminal investigation into said matters. It was certainly not the fault of those who sought such a prosecution that the Bush Justice Department allowed the five years in the statute of limitations to run without prosecuting President Bush and said officials. Also, as mentioned earlier, fear can also be one of the circumstances beyond the control of a plaintiff that may warrant equitable tolling.[435] In the present situation any federal prosecutor would have feared that the Bush Justice Department would fire him or her if they investigated or prosecuted President Bush and said officials.

In the present situation, the United States of America is the injured party - it is the plaintiff named in all federal criminal indictments - and it was prevented from bringing any

---

431 *See supra* pp. 86-88.
432 *United States v. Midgley*, *supra*, 142 F.3d at 179.
433 *See supra* pp. 88-91.
434 *See supra* pp. 71-75.
435 *Chung v. U.S. Department of Justice*, *supra*, 333 F.3d at 279.

indictments against President Bush and said officials because the only government agency that could appoint a Special Counsel or bring such indictments was the Justice Department, which was not only controlled and dominated by President Bush but was extremely politicized. That control, dominance and politicization precluded and prevented the United States from bringing indictments against President Bush and said officials.

Regarding the equitable tolling doctrine of adverse domination, it is not necessary to show that President Bush, Vice President Cheney, Rice, Powell, Rumsfeld or Libby were one of the wrongdoers who controlled the entity that could have initiated an investigation and prosecution of them, but in the present situation President Bush was one of the wrongdoers and he had ultimate control over their fate. Furthermore the Justice Department was controlled by other wrongdoers as evidenced by the politicization of the Department, and the report on the firing of prosecutors for political reasons, and the lying about it.[436] Also the Obama Administration should be considered like the RTC in the case of *Resolution Trust Corporation v. Gardner*,[437] and since the Obama Administration recently took control over the United States government like the RTC took control over the failed savings and loan, then the Obama Administration should be allowed a reasonable period of time to bring indictments on behalf of the United States against people that the United States had earlier refused to investigate because it's Justice Department was controlled by wrongdoers (including one of the very people who should have been investigated).

Regarding equitable estoppel, as mentioned above, parties that seek to utilize the law of equitable estoppel must show that the party that seeks the benefit of the defense of the statute of limitations committed misconduct or inequitable conduct that prevented other parties from filing

---

436 *See supra* pp. 76-78.

437 *Resolution Trust Corporation v. Gardner*, *supra*, 798 F.Supp. at 791-792.

an action within the time limits in the statute of limitations.[438] Unlike equitable tolling, which applies to President Bush and all the said officials, equitable estoppel only applies to President Bush since he was the only one of all the said officials who controlled the Justice Department.

President Bush's control over the Justice Department that shielded him from prosecution and his authorization of the politicization of the Justice Department constitute inequitable conduct and misconduct since that control and politicization were acts that prevented the Department from prosecuting him. As mentioned earlier, fear can also be a factor in equitable estoppel.[439] In the present situation any federal prosecutor would have feared that the Bush Justice Department would fire him or her if they investigated or prosecuted President Bush.

Thus, since President Bush controlled the Justice Department that consistently shielded him and others from prosecution and refused requests for an investigation, and since the Bush Justice Department was so politicized that it would have fired any federal prosecutor who attempted to prosecute President Bush, Vice President Cheney, Rice, Powell, Rumsfeld, or Libby for said crimes, then a court would certainly rule that the statute of limitations as it regards President Bush and said officials was tolled under the doctrine of equitable tolling. Accordingly there is now, since President Bush recently left office, a reasonable period of time to bring an indictment against him and said officials. Also, under the equitable tolling doctrine of adverse domination the statute of limitations was tolled during the entire period that President Bush and other wrongdoers controlled the Justice Department, and the five years in the statute did not start to run until the day that he left office. Under the doctrine of equitable estoppel, since President Bush controlled the Justice Department that was politicized and shielded him from prosecution, then he would be estopped or prevented from raising the defense of the statute of limitations.

---

438 *See supra* pp. 86-88.

439 *Currier v. Radio Free Europe/Radio Liberty, Inc.*, *supra*, 159 F.3d at 1368.

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 against President Bush in the draft of an indictment set forth at the end of this report,[440] 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.[441]

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."[442] The ISG report states: "ISG has not found evidence to show that Iraq sought uranium from abroad after 1991 …"[443] The IAEA reports stated that allegations that Iraq sought uranium from Niger were unfounded because the supporting documents were not authentic and were forged.[444]

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.[445]

---

440 *See infra* pp. 133-139.

441 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.

442 *Presidential Commission Report, supra* note 116, at p. 64.

443 *Iraq Survey Group Report, supra* note 146, vol. 2, Nuclear, at p. 9.

444 *See supra* pp. 57 (including note 287), 63 (including note 313).

445 Although President Bush did not sign the war resolution report and he submitted it by means of an

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 'learn' is 'discover'.[446] There is a world of difference between making a judgment, which the British government did,[447] 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*.[448] The word 'recently' had been in the original draft of the State of the Union Address that the White House sent to the CIA.[449]

---

introductory letter, *see* Bush, *War Resolution Report, supra* note 17, at p. 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 Edition, 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*, 2nd 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).

[446] *Merriam Webster's Collegiate Dictionary* (10th Edition, 2000), p. 661.

[447] *See supra* note 73.

[448] *See supra* note 73.

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.

[449] *Senate Intelligence Committee Report*, *supra* note 56, at p. 65.

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.*"[450] 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*."[451]

According to the legal encyclopedia *Corpus Juris Secundum,*

> In the legal sense, fraud is defined as an *intentional perversion of truth* for the purpose of *inducing* another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right ….
>
> Fraud is a generic term embracing 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, fraud comprises all acts, omissions, and concealments involving a breach of legal or equitable duty and resulting in damage to another, and, conversely, fraud cannot exist without a breach of legal or equitable duty….
>
> Fraud has also been defined as any cunning, deception, or artifice used to circumvent, cheat, or *deceive* another.[452]

Concerning the breach of a legal or equitable duty, if a person makes a representation to influence another then that person assumes a duty to tell the whole truth and commits fraud by not disclosing the whole truth. "[M]ere silence is not a representation, and, in the absence of a duty to speak, silence as to a material fact does not of itself constitute fraud."[453]

> [However, 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. Once a party elects to speak, he or she assumes a duty not to suppress or conceal those facts that materially qualify the facts already stated but does not assume a duty to divulge all information that may be or may become relevant to the other party; the duty imposed on the speaking party is to disclose those facts that are material to the ones already stated so as to make them truthful….

---

450 *Knauer v. United States*, 328 U.S. 654, 657 (1946) (emphasis added).
451 *Black's Law Dictionary* (8th Edition, 2004), p. 685 (emphasis added).
452 37 C.J.S. *Fraud* § 1 (2008) (footnotes omitted, emphasis added).
453 *Id.* § 28.

> Although there may be no duty imposed upon one party to a transaction to speak for the information of the other, if he or she does speak with reference to a given point of information, voluntarily or at the other's request, he or she is bound to speak honestly and to divulge all the material facts bearing upon the point that lie within his or her knowledge; *fragmentary information* may be as misleading as active misrepresentation, and *half-truths* may be as actionable as whole lies.
>
> One conveying a false impression by the disclosure of some facts and the concealment of others is guilty of fraud, even though his or her statement is *true as far as it goes*.
>
> ….
>
> 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 that is literally true* is actionable if it is used to create an impression substantially false, as where it does not state matters which materially qualify that statement. [454]

Civil fraud cases consistently hold that a person who has no duty to speak 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.[455]

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."[456]

---

[454] *Id.* §§ 32, 35 (footnotes omitted, emphasis added).

[455] *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 Stellent, 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* §§ 1, 12, 123 (2008). 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. 108-111.

[456] *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.

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.[457] 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.[458]

President Bush's uranium claims in his war resolution report and his State of the Union report were false as noted above, and were also *fraudulent* since he suppressed material facts: the Intelligence Community's warnings discrediting the uranium claim.[459] President Bush made the

---

[457] *See supra* p. 96; 18 U.S.C. § 1001(a)(1),(2).

[458] 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. Safavian*, 528 F.3d 957, 964 (D.C. Cir. 2008); *see also 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. Safavian*, *supra*, 528 F.3d at 965; *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. Calhoon*, 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. *See 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 noted above, making a fraudulent statement can consist of making a statement that with the intent to deceive contains half truths or conceals material facts, 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 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 with the intent to deceive contains half truths or conceals material facts. 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 448. 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* pp. 111-112, including note 500.

[459] *See supra* pp. 39-41.

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 uranium claims were misleading.[460]

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."[461] Even assuming momentarily that the statement was factually correct, it was still fraudulent since fraud may consist of making a statement with the intent to deceive that has "*fragmentary information*" and that is "*true as far as it goes*",[462] and making a statement containing "*half truths* calculated to deceive" and that is "*literally true.*"[463] 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.[464]

---

460 *Iraq on the Record*, *supra* note 15, 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 16, at pp. 1-5.

461 Tenet, *Statement by George J. Tenet, Director of Central Intelligence*, *supra* note 74, at para. 12.

462 37 C.J.S. *Fraud* § 32 (2008) (emphasis added).

463 *Id.* § 35 (emphasis added).

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

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.

Fraud involves an intent to deceive, and although McClellan states that he does not believe that President Bush or his Administration deliberately or consciously deceived anyone,[465] he provides information showing that there was deception. McClellan reveals there was a "marketing campaign",[466] to sell the war that included a "lack of candor and honesty in making the case for war",[467] and that included, as mentioned earlier,

> *shading the truth*; … trying to make the *WMD threat* and the Iraqi connection to terrorism appear just a little more certain, *a little less questionable*, than they were; quietly *ignoring or disregarding some of the crucial caveats in the intelligence and minimizing evidence that pointed in the opposite direction*; using innuendo and implication to encourage Americans to believe as fact some things that were unclear and possibly false[,] … such as the idea that Saddam [Hussein] had an *active nuclear weapons program*.[468]

The uranium claims were a crucial part of that marketing campaign. As McClellan observes: "[President Bush's uranium] *claim remained in the public mind one of the most potent bits of evidence in the administration's case for war.* After all, the threat of nuclear attack by Iraq seemed far more frightening to most Americans than the more remote danger of a chemical or biological attack on U.S. soil."[469]

---

[465] McClellan, *What Happened: Inside the Bush White House and Washington's Culture of Deception*, *supra* note 8, at p. 312 (emphasis added).

[466] *Id.*

[467] *Id.* at p. 125.

[468] *Id.* at p. 132 (emphasis added). As mentioned earlier, McClellan states that there was no "out-and-out deception." *Id.*

[469] *Id.* at p. 6 (emphasis added).

McClellan provides a reason for all the deception. McClellan reveals that President Bush's primary motivation for starting the war in Iraq was his "grand vision" to transform the Middle East into a "democratic Middle East."[470] However, "[President] Bush and his advisers knew that the *American people would almost certainly not support a war launched primarily for the ambitious purpose of transforming the Middle East.*"[471] Therefore "during the campaign for war, this transformational vision for the region was downplayed by both the president and other members of his administration …. [and i]nstead, *they emphasized the threat of WMD* and the possible link between Iraq and terrorism."[472] The "decision to downplay the democratic vision as a motive for war was basically a marketing choice."[473]

Thus there was the obvious intent to deceive the public and Congress as to the real grounds for the war. There also was an obvious intent to further deceive the public and Congress into believing as fact that Iraq had WMDs, and to do that President Bush and his officials shaded the truth about the WMDs and hid information that contradicted that claim.

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. The Court of Appeals for the District of Columbia Circuit has stated: "The government may meet its burden of proof by circumstantial as well as direct evidence."[474] That court has also stated: "[C]ircumstantial evidence is as pertinent as direct evidence to the establishment of guilt or innocence in a criminal case."[475] That court has

---

470 *Id.* at p. 130.
471 *Id.* at p. 131 (emphasis added).
472 *Id.* at p. 130 (emphasis added).
473 *Id.* at p. 131.
474 *United States v. Stewart*, 104 F.3d 1377, 1381 (D.C. Cir. 1997).
475 *Unites States v. Wood*, 879 F.2d 927, 938 (D.C. Cir. 1989).

further stated: "[I]t is the traditional providence of the jury to assess the significance of circumstantial evidence …"[476]

Circumstantial evidence is defined as "[e]vidence based on inference and not on personal knowledge or observation."[477] An inference is a "conclusion reached by considering other facts and deducing a logical consequence from them."[478]

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 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 …[479]

---

[476] *United States v. Treadwell*, 760 F.2d 327, 333 (D.C. Cir. 1985) (citation and internal citation marks omitted).

[477] *Black's Law Dictionary* (8th Edition, 2004), p. 595.

[478] *Id.* at p. 793.

[479] *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.").

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,[480] 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.

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.[481]

There is also the circumstantial evidence that the CIA's Deputy Director of Intelligence told Rice in September 2002 that the CIA had concerns about the uranium claim in a proposed presidential speech and was recommending that the claim be removed (which Rice agreed to); and the CIA in October 2002 sent a memo to Rice telling her that the evidence on the uranium claim was weak and that President Bush should not make the claim; and Rice 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 and should not be in presidential speeches. Also there is the circumstantial evidence of the White House pictures showing President Bush's input into his State of the Union

---

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

481 *See supra* pp. 39-41.

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.[482]

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* …[483]

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 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 Congressional efforts to delay the start of the war. As mentioned earlier, President Bush and the White House in September, October, 2002 followed the CIA's warnings about the uranium claims and removed the claims from presidential speeches.[484] However, in January 2003 after UN inspectors had entered Iraq and found no weapons of mass destruction, which resulted in a Congressional movement to delay the start of the war, President Bush and said officials ignored the CIA's warnings and resorted to the uranium claims in a desperate attempt to maintain support for the war.

---

482 *See supra* p. 28.

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

484 *See Waxman Memorandum*, *supra* note 156, at pp. 5-9.

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."[485]

McClellan also provides the motive: President Bush wanted to transform the Middle East but he knew that the American people would not support a war to accomplish that goal so President Bush therefore emphasized the threat of WMDs and the Iraqi connection to terrorism as grounds for the war and he had to shade the truth to make those matters believable.[486]

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 the statement's 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.[487]

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],

---

485 *The Constitution in Crisis, supra* note 52, at p. 27.

486 *See supra* pp. 66-68.

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

> 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 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.[488]

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.*[489]

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.[490]

---

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

[489] *United States v. O'Brien, supra*, 14 F.3d at 704-705, 707-708 (citations and citation marks omitted, emphasis added).

[490] *United States v. Calhoon, supra*, 97 F.3d at 530 (citations and citation marks omitted); *see also United*

In the view of Vice President Cheney's office, President Bush's uranium claim concerned a "matter of signal importance: the rationale for the war in Iraq."[491] 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 our national security against the threat posed by Iraq and (2) enforce UN Security Council resolutions.[492] 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.[493]

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

---

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 455.

[491] *Government's Response to Defendant's Third Motion to Compel Discovery*, *supra* note 34, at p. 18.

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

[493] Security Council Resolution 1441, *supra* note 233, at pp. 3-4, paras. #3, #7.

capable of deceiving Congress into believing that Iraq not only had a current nuclear weapons 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.[494] 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."[495] In their ability to evoke horror, nuclear weapons are in a class by themselves and thus the Administration's claims about Iraq's nuclear capabilities had a large impact on congressional perceptions about the threat posed by Iraq.[496] 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

494 *See* Wolfowitz, *Deputy Secretary Wolfowitz Interview with Sam Tannenhaus, supra* note 54, at p. 14.
495 *Iraq on the Record*, *supra* note 15, at p. 13.
496 *See Id.* at pp. 7-8.

alarms.[497] McClellan states: "[President Bush's uranium] claim remained in the public mind one of the most potent bits of evidence in the administration's case for war. After all, the threat of nuclear attack by Iraq seemed far more frightening to most Americans than the more remote danger of a chemical or biological attack on U.S. soil."[498]

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."[499] President Bush's war resolution report and his State of the Union Address satisfy both criteria.[500]

---

497 *The Constitution in Crisis*, *supra* note 52, at p. 35.

498 McClellan, *What Happened: Inside the Bush White House and Washington's Culture of Deception*, *supra* note 8, at p. 6.

499 18 U.S.C. § 1001(c) (emphasis added).

500 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 17, 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 20, 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.

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 o[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

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.[501]

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.[502] 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.[503]

Also, the uranium claims that they made were fraudulent, as defined above,[504] 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.[505]

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

---

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.

501 *See infra* pp. 133-139.

502 *See supra* pp. 30, 57, 63 (reports of the presidential commission, ISG, and UN's IAEA).

503 *See supra* note 73.

504 *See supra* pp. 98-100.

505 *See supra* pp. 39-41

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 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.[506]

Concerning said uranium claims, which are the basis of Count Three against President Bush, Vice President Cheney, National Security Advisor Rice, Secretary Powell, Secretary Rumsfeld, and Libby, in the draft of an indictment set forth at the end of this report,[507] 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.[508]

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."[509]

---

506 *See supra* p. 41.
507 *See infra* pp. 140-145.
508 18 U.S.C. § 371 (2000) (emphasis added).
509 *Dennis v. United States*, 384 U.S. 855, 861 (1966) (citations and citation marks omitted, emphasis added).

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.[510]

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.[511]

In the present case, there is strong circumstantial evidence that President Bush, Vice President Cheney, National Security Advisor Rice, Secretary Powell, Secretary Rumsfeld, 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

---

[510] *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924) (emphasis added). The earlier conspiracy statute discussed in that case contained basically the same wording as 18 U.S.C. § 371.

[511] *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)).

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. 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 a conspiracy, the Supreme Court has stated:

> Participation in a criminal conspiracy need not be proved by direct evidence; a *common purpose and plan may be inferred from a development and a collocation of circumstances*. We are clear that, from the circumstances outlined above, the jury could *infer the existence of a conspiracy and the participation* of [the defendant] in it.[512]

The Court of Appeals for the District of Columbia Circuit has stated: "Especially in conspiracy cases, it is unusual to have direct evidence of the conspiracy. Circumstantial evidence, including inferences from a development and a collocation of circumstances, suffices to prove participation in a conspiracy."[513]

Concerning the element of an agreement, the Tenth Circuit Court of Appeals has 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.

---

[512] *Glasser v. United States*, 315 U.S. 60, 80 (1942) (internal citation and citation marks omitted, emphasis added).

[513] *United States v. Wood, supra*, 879 F.2d at 938 (internal citation and citation marks omitted).

> 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*.[514]

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*",[515] then Vice President Cheney's and Libby's actions 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."[516] 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

---

514 *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.").

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

516 The White House, *National Security Council*, *supra* note 110, at para. 1 (emphasis added).

lobbyist to Congress, and included Libby.[517] Libby was in charge of producing papers that Iraq had weapons of mass destruction.[518] 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."[519]

Prior to the five uranium claims, Members of Congress on January 7, 2003 introduced a resolution that sought to repeal the war resolution.[520] 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."[521] As mentioned earlier, an article in *The New York Times* stated that Powell's January 2003 speech criticizing those who sought more time for weapons inspections was "part of a campaign by the White House, culminating in President Bush's State of the Union address …, to rally public opinion at home and abroad."[522]

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

Furthermore, the marketing campaign that McClellan describes was a classic conspiracy agreement. McClellan states that there was a "marketing campaign" that included downplaying the real reason for the war, which was to transform the Middle East, because America would not support a war for that reason; and consequently the marketing campaign focused on selling the war on the basis that Iraq had WMDs and links to terrorism, and that campaign included shading the truth about Iraq's WMDs, ignoring crucial caveats in the intelligence, and manipulating

---

517 *See The Constitution in Crisis*, *supra* note 52, at p. 33 (*see also supra*, note 216); Woodward, *Plan of Attack*, *supra* note 214, at p. 168.

518 *See supra* p. 8.

519 Woodward, *Plan of Attack*, *supra* note 214, at p. 172.

520 H. Con. Res. 2 (2003), *supra* note 242.

521 Woodward, *Plan of Attack*, *supra* note 214, at p. 286 (emphasis added).

522 Landler and Cowell, *Threats and Responses: Diplomacy; Powell, in Europe, Nearly Dismisses U.N.'s Iraq Report*, New York Times, *supra* note 265, at para. 11.

sources of public opinion and approval (hiding such caveats and intelligence from the public).[523] The word 'campaign' means "a connected series of operations *designed* to bring about a particular result."[524] A synonym for the word 'design' is the word 'plan'.[525]

Also the members of a conspiracy need not enter the agreement or plan all at the same time nor do much to join the conspiracy agreement.[526]

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.[527] 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.[528] Also, without such an authorization or declaration of war, Congress could at anytime have directed President Bush to remove American troops from Iraq.[529] 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

---

[523] *See supra* pp. 66-71; McClellan, *What Happened: Inside the Bush White House and Washington's Culture of Deception*, *supra* note 8, at pp. 312, 130-132, 134, 125.

[524] *Merriam Webster's Collegiate Dictionary* (10th Edition, 2000), p. 164 (emphasis added).

[525] *Id.* at p. 312.

[526] 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.

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

[528] 50 U.S.C. § 1544(b).

[529] 50 U.S.C. § 1544(c).

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.[530] As 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."[531]

The initial five uranium claims were made to defuse the movement for more time for weapons inspections. As mentioned earlier, President Bush and the White House in September, October, 2002 followed the CIA's warnings about the uranium claims and removed the claims from presidential speeches.[532] However, in January 2003 after UN inspectors had entered Iraq and found no weapons of mass destruction, which resulted in a Congressional movement to delay the start of the war, President Bush and said officials ignored the CIA's warnings and resorted to the uranium claims in a desperate attempt to maintain support for the war and defuse the Congressional movement to delay the start of the war.

The speeches and reports containing the uranium claims usually contained direct or indirect references to that movement.[533] 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

---

530 *See supra* pp. 46, 54-56, 62-63.
531 *Iraq on the Record*, *supra* note 15, at p. ii.
532 *See Waxman Memorandum*, *supra* note 156, at. pp. 5-9.
533 *See supra* pp. 50-52.

the Administration's uranium claims restrained that Congressional movement to stop or delay the start of the war.[534]

The Bush Administration's five pre war uranium claims in January 2003 were capable of obstructing 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.[535]

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. Therefore, according to Vice President Cheney and Libby 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,[536] and there were Congressional resolutions filed in 2006 and 2007 that sought to repeal the Congressional authorization for the war.[537]

---

534 *See supra* pp. 54-62.
535 *See supra* pp. 108-111.
536 *See supra* p. 63.
537 *See supra* p. 63.

The Administration's uranium claims certainly were capable of obstructing the functions of Congress. Wolfowitz revealed that the Bush 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.[538] 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."[539] 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.[540] The Bush 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 alarms.[541] Even after the start of the war, the Bush 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.[542]

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

---

538 *See* Wolfowitz, *Deputy Secretary Wolfowitz Interview with Sam Tannenhaus*, *supra* note 54, at p. 14.
539 *Iraq on the Record*, *supra* note 15, at p. 13 (emphasis added).
540 *See Id.* at pp. 7-8.
541 *See The Constitution in Crisis*, *supra* note 52, at p. 35.
542 *See supra* pp. 7-12.

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.[543]

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.[544] 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 uranium claims. Also there were the overt acts of

---

[543] *See supra* pp. 5-12, 39-41.

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. 17, 19. 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 56, 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 Bush Administration had but did not disclose.

[544] *United States v. Ballistrea*, *supra*, 101 F.3d at 831-833.

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.[545] It was not until 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.[546]

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.[547]

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

---

[545] *See supra* pp. 116, 10-12.

[546] The Bush White House, *Press Briefing by Dan Bartlett and Steve Hadley on Iraq Weapons of Mass Destruction and the State of the Union Speech*, American Embassy, Israel, *supra* note 142, paras. 47-49 of transcript (pp. 8-9 if printed).

[547] 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. 118, including note 526.

conspiracy agreement.[548] Thus it is not necessary to prove that the Bush 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 Bush 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 America.'"[549] 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 and required him to at least await the conclusion of the UN weapons inspections. A survey released by *ABC News* on

---

[548] 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.

[549] Woodward, *Plan of Attack*, *supra* note 214, at p. 357.

January 5, 2007 revealed 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.[550]

Even though Congress eventually learned the truth that Iraq had no nuclear weapons or programs, nor sought uranium, Congress did not repeal the war resolution perhaps because of what Secretary Powell described as the Pottery Barn rule: You break it, you own it.[551]

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.[552] 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.[553]

There is also the circumstantial evidence that the CIA's Deputy Director of Intelligence told then National Security Advisor Rice in September 2002 that the CIA had concerns about the uranium claim in a proposed presidential speech and was recommending that the claim be removed (which Rice agreed to), and the CIA in October 2002 sent a memo to Rice telling her that the evidence on the uranium claim was weak and that President Bush should not make the claim, and she spent hours with President Bush preparing his January 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

---

550 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).*

551 *See* Woodward, *Plan of Attack*, *supra* note 214, at p. 150.

552 *See supra* pp. 103-105.

553 *See supra* pp. 39-41.

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 earlier warnings from the CIA that the evidence on the uranium claim was weak and should not be in presidential speeches, 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 earlier warnings that the evidence on the uranium claim was weak and should not be in presidential speeches.

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 made these claims that there was a document that supported President Bush's uranium claims despite the fact that their office had issued a memorandum stating that prior to the publication of that very document the CIA had expressed serious concerns about the credibility of the uranium claim. Furthermore they made these claims about that document even though the NIC, which had published the document, later 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.[554]

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 Bush Administration officials made 935 false statements that Iraq was a threat to national security.[555] 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.*"[556]

Also, as revealed in the Waxman Memorandum the Bush White House made additional false statements to Congress when then White House Counsel Gonzales on behalf of Rice in his letter of January 6, 2004 told the Senate Intelligence Committee that the CIA in September 2002 cleared the uranium claims in two proposed presidential speeches.[557]

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."[558]

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."[559]

Also McClellan describes a plan of deception: President Bush wanted to transform the Middle East but he and his advisers knew that the American people would not support a war to

---

554 *Iraq on the Record*, *supra* note 15, at pp. 25-29.

555 Lewis and Reading-Smith, *Iraq: The Wild Card, Orchestrated Deception on the Path to War*, *supra* note 326, Overview, False Pretenses, at paras. 1-2 (p. 1 if printed).

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

557 *Waxman Memorandum*, *supra* note 156, at pp. 5-11.

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

559 *The Constitution in Crisis*, *supra* note 52, at p. 27.

accomplish that goal so President Bush and other members of his Administration therefore emphasized the threat of WMD and the Iraqi connection to terrorism as the grounds for the war and they had to shade the truth to make those matters believable.[560]

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

Thus there is overwhelming direct and circumstantial evidence that President Bush, Vice President Cheney, National Security Advisor Rice, Secretary Powell, Secretary Rumsfeld, and Libby conspired to defraud Congress and thereby 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.[561]

IV. CONCLUSION

As mentioned earlier, then Senator Obama stated last April that if elected President he would have his "Attorney General immediately review the *information that's already there*" regarding whether Bush Administration officials committed any crimes and he stated that "if crimes have been committed, they should be investigated."[562] Senator Obama furthered stated: "I would want to find out directly from my Attorney General – having pursued, having looked at what's out there right now – are there possibilities of genuine crimes as opposed to really bad policies…. I think a basic principle of our Constitution is *nobody [is] above the law*."[563]

As this report reveals, an analysis of the *information that's already there* in the public record, including Congressional investigative reports and documents, reveals that President Bush

---

560 *See supra* pp. 66-68.

561 *See infra* pp. 140-145.

562 Bunch, *Obama Would Ask His AG to "Immediately Review" Potential of Crimes in Bush White House*, Philadelphia Daily News, Philly.Com, *supra* note 1 (emphasis added).

563 *Id.* (emphasis added).

made false and fraudulent statements to Congress in violation of 18 U.S.C. § 1001, and that he, Vice President Cheney, National Security Advisor Rice, Secretary Rumsfeld, Secretary Powell and Vice President Cheney's Chief of Staff Libby conspired to defraud Congress in violation of 18 U.S.C. § 371.

That record is presently strong enough that a grand jury could return an indictment on these specific crimes rather quickly. 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" pursuant to 28 C.F.R. § 600.2[564] and request that you appoint a Special Counsel "from outside the United States Government" to prosecute President Bush and said officials for said matters pursuant to 28 C.F.R. § 600.3.[565]

Even though the Obama Justice Department at first glance does not have a typical conflict of interest in investigating President Bush and his officials, the Department's regulations provide for the appointment of outside Special Counsels in circumstances other than those involving conflicts of interests. 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

---

564 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.]

565 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.]

> 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.]

The situation of a new Administration investigating a recent President presents such an extraordinary circumstance especially since a new Administration might be tempted to 'move forward' in order to avoid criticism that its investigation was politically motivated.

Furthermore, it could be argued that the phrase 'move forward' could be interpreted as code for a double standard and as a guise to move past and ignore the crimes of a recent President in order to continue an imperial presidency where Presidents can commit crimes without any accountability, while normal people are held accountable in this country that has the world's highest incarceration rate.[566] Also, there is certainly a special bond between Presidents as members of the world's "most exclusive club."[567] Thus it might even be argued that the Obama Justice Department has the appearance of a conflict of interest in investigating another member of that exclusive club, President Bush, and that appearance of a conflict of interest should also warrant the appointment of an outside Special Counsel.

To avoid criticism that an investigation of President Bush and said other officials by the Obama Justice Department was politically motivated, while assuring all Americans that no one is above the law, you should appoint an outside Special Counsel pursuant to the above regulation that allows such appointments in extraordinary circumstances and in the public interest. As noted earlier, Congressman Nadler in January introduced a resolution stating that the next

---

[566] *See Sen. Webb's Call for Prison Reform*, Editorial, New York Times (Dec. 31, 2008) (noting that this country has the world's highest reported incarceration rate, with less than 5 percent of the world's population and almost one-quarter of the world's prisoners.)*

[567] *See* Kenneth R. Bazinet, *All the Presidents' Lunch: Barack Obama Meets Past Presidents*, Daily News (Jan. 7, 2009) (reporting that "President-elect Barack Obama convened the most exclusive club in the world on Wednesday, huddling at the White House for the ultimate power lunch with the living Presidents.)*

Attorney General should appoint an outside counsel to investigate senior officials of the Bush Administration.[568]

Furthermore, some contend that the Obama Administration should ignore past crimes by Bush Administration officials because the Obama Administration and our government must move forward and focus on solving current problems, rather than being distracted. However, outsourcing the investigation of President Bush and said officials to an *outside* Special Counsel eliminates that argument and allows our government to focus on addressing current problems. Also, such an outside Special Counsel would be investigating a past President and not distracting the current President from his duties.

Furthermore, an investigation by a Special Counsel would not weaken the morale of current government employees such as at the CIA but would raise their morale since the investigation concerns how President Bush and his officials ignored the warnings of career employees at the CIA. The subsequent ISG report verified those warnings.

Obviously you should appoint as Special Counsel someone who is not only from outside the United States Government but who has prosecutorial experience and no actual or even the appearance of a conflict of interest.[569] It should be noted that outside 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 pursuant to 28 C.F.R. § 600.7(b),(d).

---

[568] H. Res. 9 (2009), *supra* note 2, at para. 12, #5.

[569] Furthermore, assigning someone within the Obama Justice Department to investigate these matters pursuant to Justice Department regulation 28 C.F.R. § 600.2(c) but who worked in or was a Presidential appointee in the Bush Justice Department would also raise conflict of interest issues.

When Martha Stewart was indicted, the then United States Attorney in New York, James Comey, stated: "This criminal case is about lying…. It's a tragedy that could have been prevented if [Stewart and her codefendant] had only done what parents have taught their children for eons, … that if you are in a tight spot, lying is not the way out. Lying is an act with profound consequences."[570] The war in Iraq that President Bush started to promote his grand vision of democratizing the Middle East is a war that is a tragedy, like any war, and if President Bush and his officials had only told the truth and not deceived Congress into believing that Iraq had recently sought uranium for a nuclear bomb that it could soon use against the United States, then Congress might have prevented that tragedy. Surely the above lies by President Bush and members of his Administration have resulted in far more profound consequences than the lies of Stewart and demand far greater accountability.[571]

Thank you for your consideration of this matter.

Respectfully submitted,

Francis T. Mandanici

---

[570] Constance L. Hays, *Prosecuting Martha Stewart: The Overview; Martha Stewart Indicted by U.S. on Obstruction*, New York Times (June 5, 2003), paras. 5, 30.*

[571] As of March 21, 2009, there has been a total of 35,386 American casualties in Iraq, including 4,251 deaths and 31,135 wounded in action. United States Department of Defense, *Military Casualty Information* (2009).* According to a government agency, the Office of the Special Inspector General for Iraq Reconstruction, as of the fall of 2008 there have been 4,115 U.S. troop fatalities in Iraq and 95,236 Iraqi civilian fatalities. Office of the Special Inspector General for Iraq Reconstruction, *Hard Lessons, The Iraq Reconstruction Experience* (2009), p. 319.* *See also* Hannah Fischer, *Congressional Research Service Report for Congress, Iraqi Civilian Deaths Estimates*, CRS No. RS22537 (2008), p. 3.*

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

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 § 4(a) of said resolution requires the President to submit a report every 60 days to Congress on matters relevant to the resolution; 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 on November 13, 2002 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 that Iraq's declaration of December 7, 2002 failed to deal with the issue that Iraq had attempted to acquire uranium 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

(a) 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 warning that the document that supported the uranium claim was probably a hoax and a forgery, and the warnings that the uranium claim was highly dubious, baseless, could not be confirmed, and that BUSH as President should not make the claim because it was weak, and

(b) 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 by having such nuclear weapons was a threat to the national security of the United States.

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 made the statement that Iraq in the 1990's had an advanced nuclear weapons development program and was working on methods of "enriching uranium for a bomb"; and then

BUSH knowingly and willfully made the materially false, fictitious, and fraudulent statement that "[t]he British government has learned that [Iraq's ruler] Saddam Hussein *recently* sought significant quantities of uranium from Africa." (Emphasis added.)

(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" in said declaration his above mentioned act of seeking uranium, and that Hussein "has much to hide" from United Nations weapons inspectors, again referring to Hussein's act of seeking 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 in said report that Hussein had not credibly explained to the United Nations his act of seeking uranium and that he hid that act from the United Nations were false and fictitious statements because Hussein had not sought the uranium and thus did not fail to credibly explain that act to nor hide that act from the United Nations; 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 otherwise have been obvious.

10. Said statements were not only false and fictitious statements but also were fraudulent statements in that

(a) 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 warning that the document that supported the uranium claim was probably a hoax and a forgery, and the warnings that the uranium claim was highly dubious, baseless, could not be confirmed, and that BUSH as President should not make the claim because it was weak, and

(b) 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 by having such nuclear weapons was a threat to the national security of the United States.

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 Vice President of the United States), the defendant CONDOLEEZZA RICE (the then National Security Advisor and later 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 use 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 weapon 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 valid because Iraq having sought uranium for a nuclear weapon did have such nuclear weapons and thus was a threat to the national security of the United States.

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 a 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* (war resolution report), which was 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 a report to Congress 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, stated that Iraq in the 1990's had an advanced nuclear weapons development program and was working on methods of "enriching uranium for a bomb"; and then he stated that "[t]he British government has learned that [Iraq's ruler] Saddam Hussein *recently* sought significant quantities of uranium from Africa" (emphasis added); 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, President BUSH stated that "Hussein has not credibly explained" in said declaration

his above mentioned act of seeking uranium, and that Hussein "has much to hide" from United Nations weapons inspectors, again referring to Hussein's act of seeking 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 a nuclear weapon?"

(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 was the Chief of Staff to Vice President CHENEY and in charge at the White House for producing papers that argued the case that Iraq had weapons of mass destruction; and Vice President CHENEY on or about July 7, 2003 communicated to his Chief of Staff 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 specific reporter that the NIE stated that Iraq had vigorously tried to procure uranium, and thus LIBBY on July 8, 2003 met with that reporter 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 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

(a) BUSH, RICE, POWELL, and RUMSFELD 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 or attempted to acquire uranium, such as the warning that the document that supported the uranium claim was probably a hoax and a forgery, and the

warnings that the uranium claim was highly dubious, baseless, could not be confirmed, and that President BUSH should not make the claim because it was weak, and

(b) BUSH, RICE, POWELL, and RUMSFELD made said statements to deceive Congress into believing that it should not repeal or modify the war resolution because the grounds for the war resolution were still valid since Iraq having sought uranium for a nuclear weapon did have such nuclear weapons and thus was a threat to the national security of the United States.

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

(a) Vice President 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 the document that supported the uranium claim was probably a hoax and a forgery, the warning that the uranium claim could not be confirmed, and the warning that President BUSH should not make the claim because it was weak, and

(b) Vice President CHENEY and LIBBY made the said statements to deceive Congress into believing that the statements that President BUSH made in his above two reports to Congress about Iraq seeking uranium were true, and thus to further deceive Congress into believing that it should not repeal or modify the war resolution because the grounds for the war resolution were still valid since Iraq having sought uranium for a nuclear weapon did have such nuclear weapons and thus was a threat to the national security of the United States.

In violation of 18 U.S.C. § 371.

A True Bill

_____ _____

Special Counsel Foreperson

URL ADDRESSES

The following are the URL addresses for the matters in the corresponding footnotes. Books such as *What Happened: Inside the Bush White House and Washington's Culture of Deception* (note 8), *The One Percent Doctrine* (note 139), and *Plan of Attack* (note 214) do not have URL addresses. Also as mentioned earlier, *see supra* note 9, some pictures that were on the website of the Bush White House are no longer available on the Internet since that website has ended. However, other matters that were on that website are available on other websites, and the URL links for those matters are provided below.

1. Will Bunch, *Obama Would Ask His AG to "Immediately Review" Potential of Crimes in Bush White House*, Philadelphia Daily News, Philly.Com, available at http://www.philly.com/philly/blogs/attytood/Barack_on_torture.html

2. H. Res. 9, 111th Cong., available at http://thomas.loc.gov/cgi-bin/bdquery/D?d111:9:./list/bss/d111HE.lst::|TOM:/bss/111search.html (click on Text of Legislation)

15. 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*)

16. House Committee on Government Reform Minority (Democratic) Staff, 108th Cong., *Iraq on the Record Database*, available at http://oversight.house.gov/IraqOnTheRecord/ (go 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*.

17. Bush, *War Resolution Report*, available at http://www.gpoaccess.gov/serialset/cdocuments/108cat1.html (click on H.Doc. 23, Report on Matters Relevant to the Authorization for Use of Military Force Against Iraq Resolution of 2002, PDF)

19. 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

20. Bush, *State of the Union Report*, available at http://www.gpoaccess.gov/serialset/cdocuments/108cat1.html (click on H.Doc. 1, State of the Union Message, PDF)

24. Condoleezza Rice, *Why We Know Iraq Is Lying*, Op-Ed, New York Times, available at http://query.nytimes.com/gst/fullpage.html?res=9E01E5DF1E30F930A15752C0A9659C8B63 (for entire article click on Print)

25. Colin Powell, *Powell Addresses World Economic Summit*, CNN.com, available at http://transcripts.cnn.com/TRANSCRIPTS/0301/26/se.01.html and for another transcript go to http://www.us-mission.ch/press2003/2601Powell.html

26. 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), if the that link is not available go to http://www.globalsecurity.org/military/library/news/2003/01/mil-030129-dod01.htm

27. 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 Bush White House, *What Does Disarmament Look Like?*, GlobalSecurity.org, available at http://www.globalsecurity.org/wmd/library/news/iraq/2003/iraq-030123-disarmament.pdf

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, available at http://mediamatters.org/items/printable/200510190001

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

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

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

33. 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

34. *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

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

44. The Bush White House, Press Release, *President Bush Discusses Global War on Terror*, GlobalSecurity.org, available at http://www.globalsecurity.org/wmd/library/news/iraq/2006/04/iraq-060410-whitehouse01.htm

48. Carol D. Leonnig and 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

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

52. House Judiciary Committee Minority (Democratic) Staff, 109th Cong., *The Constitution in Crisis* (Final Investigative Report, August, 2006), available at http://www.afterdowningstreet.org/downloads/crisis/fullreport.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

54. 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)

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

73. Joint Intelligence Committee, *Iraq's Weapons of Mass Destruction, The Assessment of the British Government*, available at http://news.bbc.co.uk/nol/shared/spl/hi/middle_east/02/uk_dossier_on_iraq/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://downingstreetmemo.com/docs/Butler-Review-Intel-WMD-898.pdf

74. 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

94. 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

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

116. *Presidential Commission Report*, available at http://www.gpoaccess.gov/wmd/pdf/full_wmd_report.pdf

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

121. 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)

128. Barton Gellman and 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

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

142. The Bush White House, *Press Briefing by Dan Bartlett and Steve Hadley on Iraq Weapons of Mass Destruction and the State of the Union Speech*, American Embassy, Israel, available at http://www.usembassy-israel.org.il/publish/press/2003/july/072405.html

146. *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)

150. 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/phaseiiaccuracy.pdf

154. Senate Select Committee on Intelligence, 110th Cong., *Report on Whether Public Statements Regarding Iraq by U.S. Government Officials Were Substantiated by Intelligence Information*, available at http://intelligence.senate.gov/080605/phase2a.pdf

156. *Waxman Memorandum*, available at http://oversight.house.gov/story.asp?ID=2294 (click on Documents and Links, Memo on the President's Claim that Iraq Sought Uranium from Niger)

196. Alissa J. Rubin and Campbell Robertson, *U.S. Helps Remove Uranium from Iraq*, New York Times, available at http://www.nytimes.com/2008/07/07/world/middleeast/07iraq.html

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

233. Security Council Resolution 1441 (S.C. Res. 1441), available at 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)

236. 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

237. 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

238. 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

242. 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)

247. 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

249. 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

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

265. Mark Landler and Alan Cowell, *Threats and Responses: Diplomacy; Powell, in Europe, Nearly Dismisses U.N.'s Iraq Report*, New York Times, available at http://query.nytimes.com/gst/fullpage.html?res=9C06E0DD1239F934A15752C0A9659C8B63

270. 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)

274. 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)

276. 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)

279. 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)

280. 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

283. Draft Security Council Resolution 215 (Mar. 7, 2003), available at http://www.un.org/News/dh/iraq/res-iraq-07mar03-en-rev.pdf

286. 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

288. 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

289. 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

290. 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

291. 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

292. 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

293. 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)

298. 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)

305. 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

307. 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

308. 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)

312. George W. Bush, *Communication from the President of the United States Transmitting a Report Consistent with Section 3(b) of the Authorization for Use of Military Force Against Iraq Resolution of 2002, Public Law 107-243*, House Document No. 108-50, available at http://www.gpoaccess.gov/serialset/cdocuments/108cat1.html (click on H.Doc. 50, A Report in Connection with Presidential Determination Under Public Law 107-243, PDF)

313. 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

314. 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)

315. 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)

326. 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

356. Letter from Congressman Maurice Hinchey to Patrick Fitzgerald; said letter minus footnotes available at http://www.house.gov/hinchey/newsroom/press_2005/091505fitzgeraldletter.html

359. 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

362. 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

368. U.S. Department of Justice, Office of the Inspector General, and Office of Professional Responsibility, *An Investigation into the Removal of Nine U.S. Attorneys in 2006*, available at http://www.justice.gov/oig/special/s0809a/final.pdf

372 Letter from John Conyers, Jr., Chairman, House Committee on the Judiciary, to The Honorable Michael B. Mukasey, available at http://judiciary.house.gov/News/PDFs/Conyers-Scott-Sanchez081006.pdf

373. U.S. Department of Justice, Office of the Inspector General, and Office of Professional Responsibility, *An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division*, available at http://www.usdoj.gov/oig/special/s0901/final.pdf

376. 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://donsiegelman.org/files/Shields_politicalprofilling_45pages.pdf

377. House Committee on the Judiciary Majority Staff, 111th Cong., *Reining in the Imperial Presidency*, available at http://judiciary.house.gov/hearings/printers/110th/IPres090113.pdf

House Committee on the Judiciary Majority Staff, 110th Cong., *Allegations of Selective Prosecution in Our Federal Criminal Justice System*, available at http://judiciary.house.gov/hearings/pdf/SelProsReport080417.pdf

464. 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

500. 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)

550. 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

566. *Sen. Webb's Call for Prison Reform*, Editorial, New York Times, available at http://www.nytimes.com/2009/01/01/opinion/01thu3.html?_r=2&ref=opinion

567. Kenneth R. Bazinet, *All the Presidents' Lunch: Barack Obama Meets Past Presidents*, Daily News, available at http://www.nydailynews.com/news/politics/2009/01/07/2009-01-07_all_the_presidents_lunch_barack_obama_me.html

570 Constance L. Hays, *Prosecuting Martha Stewart: The Overview; Martha Stewart Indicted by U.S. on Obstruction*, New York Times, available at http://query.nytimes.com/gst/fullpage.html?res=9402E6D91E30F936A35755C0A9659C8B63 (for entire article click on Print)

571. United States Department of Defense, *Military Casualty Information*, available at http://siadapp.dmdc.osd.mil/personnel/CASUALTY/castop.htm (click on Casualty Summary by Component)

Office of the Special Inspector General for Iraq Reconstruction, *Hard Lessons, The Iraq Reconstruction Experience*, available at http://www.sigir.mil/hardlessons/default.aspx (on right under Files for Download click on Hard Lessons: The Iraq Reconstruction Experience)

Hannah Fischer, *Congressional Research Service Report for Congress, Iraqi Civilian Deaths Estimates*, CRS No. RS22537, available at http://fpc.state.gov/documents/organization/110395.pdf

PICTURES OF PRESIDENT BUSH PREPARING HIS 2003 STATE OF THE UNION ADDRESS

The pictures of President Bush preparing his 2003 State of the Union Address were part of the report submitted to Attorney General Holder but are not in this PDF version of that report.