To
The Grand Jury
United States District Court
For The District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Report in Support of Request that the Grand Jury Conduct an Investigation into the Bush Administration's False and Fraudulent 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 And Request to Appear Before the Grand Jury

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I. INTRODUCTION

The undersigned Francis T. Mandanici hereby requests the grand jury to conduct an investigation into the false and fraudulent statements that the Bush Administration made that Iraq had sought uranium for a nuclear weapon. Said statements violated the criminal statute 18 U.S.C. § 1001, which prohibits making false and fraudulent statements to Congress, and the criminal statute 18 U.S.C. § 371, which prohibits conspiring to obstruct the functions of Congress. Also the undersigned requests the grand jury to invite him to appear before it to explain these matters.

The undersigned hereby incorporates by reference the enclosed 155-page report, dated March 31, 2009, that he submitted to Attorney General Eric Holder requesting Holder to appoint an outside Special Counsel to investigate the Bush Administration's uranium claims.[1] That report is based on an analysis of the public record and the law, and shows that the Bush Administration's uranium claims violated said statutes. A summary of that report is presented below. That request was not granted, and as mentioned below similar requests to the Attorney Generals in the Bush Administration were not granted.

Also as mentioned below the law allows a grand jury to conduct its own investigations without the consent or participation of government prosecutors. The law also allows a grand jury to sign an indictment, such as the indictment at the end of this report, and return that indictment in open court even though a government attorney might refuse to sign it.

Any questions that the grand jury might have on these matters can be submitted to the judge who impaneled the grand jury.

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[1] That 155-page report is also available on the Internet. *See* Frank Mandanici, *We Need a Special Counsel to Investigate Bush's Uranium Lies* (May 8, 2009), http://www.democrats.com/uranium-special-counsel (in the second paragraph click on 155 page report).

II. THE URANIUM CLAIMS AND SURROUNDING CIRCUMSTANCES

In October 2002 Congress passed the resolution that authorized President Bush to use military force against Iraq (war resolution).[2] That resolution also stated that prior to the use of such force (or within 48 hours of using it) the President must notify Congress that reliance on further diplomatic or other peaceful means alone would not protect our national security against the threat posed by Iraq or lead to the enforcement of United Nations Security Council resolutions regarding Iraq. Thereafter on November 8, 2002 the UN Security Council passed Resolution 1441 that demanded that Iraq provide to the UN a declaration of all aspects of its programs to develop chemical, biological and nuclear weapons. That resolution also set forth an enhanced weapons inspection regimen that gave UN weapons inspectors unrestricted access to any sites in Iraq and the right to remove and destroy any such chemical, biological or nuclear weapons. Iraq agreed to that resolution and on November 27 allowed UN weapons inspectors to enter Iraq. On December 7 Iraq provided its declaration to the UN required by Resolution 1441.

By early January 2003 the UN weapons inspectors had been in Iraq for six weeks and had found no weapons of mass destruction. In response to the fact that UN inspectors had found no weapons of mass destruction Members of Congress on January 7 filed a resolution that sought to repeal the earlier war resolution and that sought to at least delay the start of the war until after the weapons inspectors finished their inspections. Also 130 Members of Congress on January 24 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 consider any UN requests for additional inspection time and encouraged him to make every attempt to achieve Iraq's disarmament through diplomatic means.

[2] The uranium claims and the surrounding circumstances are more fully set forth on pages 5-66 in the enclosed report submitted to Holder.

On January 27 the UN issued its above-mentioned report and in an accompanying press release stated that the UN's chief nuclear weapons inspector had reported that the UN inspectors had not found any evidence that Iraq had revived its nuclear weapons program. The press release ended with the statement of that chief nuclear weapons inspector in which he basically requested a few more months to complete the inspections because, as he stated, those "few months would be a valuable investment in peace because they could help us avoid a war."

To defuse that fact that UN weapons inspectors had not found any nuclear weapons after two months of inspections, President Bush and members of his Administration between January 20 and January 29, 2003 made five statements, including two directly to Congress, that said or in effect said that Iraq had had sought uranium for a nuclear bomb and or had hid that fact from UN weapons inspectors. President Bush made one of those uranium claims in his State of the Union Address that he gave to Congress on January 28, 2003. The other members of the Bush Administration who made the uranium claims were then National Security Advisor Condoleezza Rice, then Secretary of State Colin Powell, and then Secretary of Defense Donald Rumsfeld. There is strong circumstantial evidence that Vice President Richard Cheney was involved in the uranium claims since his chief of staff I. Lewis 'Scooter' Libby was in charge at the White House for producing papers arguing the case that Iraq had weapons of mass destruction.

President Bush and said officials made the uranium claims despite the fact that the Central Intelligence Agency a few months earlier in September, October 2002 had issued specific warnings to the White House that discredited the uranium claims as being weak and not credible, and had repeatedly urged the White House not to make the claim that Iraq had sought uranium. The White House obeyed those warnings and removed the uranium claims from speeches that President Bush gave in September, October 2002.

The CIA in January 2003 again warned the White House about making the claim that Iraq had sought uranium. (When issuing the warning, the CIA agreed with the White House that the British government in a report had made the statement that Iraq had sought uranium but obviously the CIA did not agree that the British statement was true.) Also, prior to any of the five uranium claims that President Bush and said officials made in January 2003, the intelligence bureau at Powell's own State Department had issued warnings that the uranium claim was highly dubious and that the documents in support of that claim were probably a hoax and a forgery.

Although the White House had earlier obeyed the CIA's warnings about the uranium claim, the White House by January 2003 had become desperate because it was losing support for the war due to the fact that UN weapons inspectors after two months of inspections had found no weapons of mass destruction in Iraq. Despite the CIA's warnings that the uranium claims were weak and not credible, President Bush and the others in January 2003 made the claims that Iraq had sought uranium in order to scare Congress and the nation into believing that even though UN weapons inspectors might not have found any nuclear weapons Iraq did in fact have such weapons since it had sought the fuel for such weapons. Therefore, based on that scenario Congress should not try to delay the start of the war or repeal the war resolution because Iraq was in fact a threat to national security. President Bush and the others did not reveal the CIA's and the State Department's warnings about the uranium claim, which obviously would have discredited that scenario.

President Bush and the others stopped publicly making the uranium claim on January 29, 2003. Secretary Powell did not make a uranium claim in his famous speech to the UN on February 5, 2003, apparently because the previous day the United States government told the UN that it could not confirm the uranium claims. The UN inspectors looking for nuclear weapons in

Iraq were obviously interested in the claims that the Bush Administration made in January 2003 that Iraq had sought uranium for a nuclear weapon. On February 4, the day before Powell gave his speech to the UN, the US government gave the UN copies of the documents in support of the claim that Iraq had sought uranium. This was in response to an apparent request by the UN weapons inspectors for information in support of the uranium claim. When the US gave the UN copies of the documents the US also told the UN the obvious – that the US "cannot confirm" the uranium claims. Since the US had told the UN the day before that it could not confirm the uranium claims, Powell did not make that claim to the UN, especially since the documents that the US had given to the UN in support of the unconfirmed claims were forgeries, as Powell's own State Department had declared a few weeks earlier.

A month later, on March 7, the UN in a press release stated that its chief nuclear weapons inspector had reported that after three months of intrusive inspections the UN inspectors had found no evidence of a nuclear weapons program in Iraq. The press release also stated that the UN's chief nuclear weapons inspector had reported that the documents that the UN had been given in support of the uranium claim were forgeries. President Bush rushed the nation to war twelve days later, on March 19, rather than allow more time for the growth of the movement that sought to delay the start of the war in order to allow the UN the time to finish its inspections.

After the start of the war, the Iraq Survey Group in a report to the CIA Director stated that Iraq had no nuclear weapons and there was no evidence that Iraq had sought uranium for such weapons.

III. REVELATIONS BY FORMER BUSH WHITE HOUSE PRESS SECRETARY

The above summary regarding the Bush Administration's uranium claims is supported not only by matters in the public record but by the statements that former Bush White House

press secretary Scott McClellan made in his book *What Happened: Inside the Bush White House and Washington's Culture of Deception.*[3] 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."[4] However as revealed 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."[5] 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."[6]

McClellan reveals that President Bush not only hid his real motives for starting the war but also 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,

> 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.[7]

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[3] Scott McClellan, *What Happened: Inside the Bush White House and Washington's Culture of Deception* (New York: Public Affairs, 2008). McClellan's statements are more fully set forth on pages 66-71 in the enclosed report submitted to Holder.

[4] *Id.* at p. 130.

[5] *Id.* at p. 131.

[6] *Id.* at p. 130.

[7] *Id.* at p. 132 (emphasis added).

McClellan further accuses the Bush Administration of a "lack of *candor and honesty* in making the case for war."[8] McClellan accuses the Bush 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."[9] He further states that the Bush Administration conducted a "political propaganda campaign to sell the war to the American people."[10] He states that the Bush Administration "vigorously [sought] to *manipulate* public approval … to sell the war",[11] and conducted a "carefully orchestrated campaign to shape and *manipulate sources* of public approval"[12] and to "*manipulat[e] sources* of public opinion."[13] McClellan states that the Bush Administration "perpetuated the endless investigations and scandals [it] vowed to move beyond by engaging in … evasion … and *deceit by omission*."[14]

When President Bush's former press secretary McClellan in his book talks about how the Bush Administration in its marketing campaign to sell the war in Iraq "shape[d] and manipulate[d] *sources* of public approval", and "manipulate[d] *sources* of public opinion" (emphasis added), he was obviously referring in part to how the Bush Administration kept from the public the above sources of information that discredited the Bush Administration's claim that Iraq had sought uranium for a nuclear bomb.

McClellan states that President Bush's uranium claim was an important part of the Bush Administration's marketing campaign to sell the war in Iraq, and he states:

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[8] *Id.* at p. 125 (emphasis added).
[9] *Id.* at p. 312.
[10] *Id.* at p. 144.
[11] *Id.* at p. 163 (emphasis added).
[12] *Id.* at p. 125 (emphasis added).
[13] *Id.* at p. 134 (emphasis added).
[14] *Id.* at p. 229 (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. However the marketing campaign and manipulation that McClellan describes obviously shows that President Bush and the White House did have a plan of deception by omission.

> [The uranium claim that President Bush made in his 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 [Hussein] can acquire nuclear weapons. *But we don't want the smoking gun to be a mushroom cloud*.[15]

The Bush Administration almost lost its deceitful marketing campaign to sell the war when it became public knowledge that the UN inspectors had found no weapons of mass destruction and that the Administration's uranium claims were based on forgeries. Bob Woodward in his book *Plan of Attack* reveals that at a meeting on March 16, 2003 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, [President Bush] said, '*Public opinion won't get better and it will get worse in some countries like America.*'"[16] President Bush's above statement (that public opinion against the war was getting worse and he therefore had to start the war in a few days) was an obvious concession that he was losing control of public opinion because he could not hide from the public the fact that the UN a few days earlier had publicly disclosed that Iraq had no nuclear weapons and also had disclosed that the Bush Administration's most alarming claim in support of the war (its claim that Iraq was secretly seeking uranium for a nuclear weapon) was based on forged documents. President Bush realized that he had to start the war immediately or keep on losing control of public opinion and risk complete failure in his marketing campaign to sell the war.

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

[16] Bob Woodward, *Plan of Attack* (New York: Simon & Schuster, 2004), p. 357 (emphasis added).

IV. THE CRIMINAL STATUTES THAT THE URANIUM CLAIMS VIOLATED

The uranium claims that President Bush and the others made were false.[17] The Iraq Survey Group report states that Iraq had no nuclear weapons and there was no evidence that Iraq had sought uranium for a nuclear weapon. Thus Iraq also never hid or failed to report such activities to the UN. It might be contended that President Bush and the others actually believed that their uranium claims were true but that is highly unlikely since if they really believed in their claims they would not have felt a need to hide the warnings that discredited their claims.

Their uranium claims were also fraudulent. The law defines a fraudulent statement as a statement that might even be literally true but that does not tell the whole truth and or tells only half-truths in order to deceive another. The uranium claims were fraudulent because President Bush and the others when they made the uranium claims suppressed material facts consisting of the warnings that the CIA and the State Department's intelligence bureau had issued that discredited the uranium claims. President Bush and the others made the uranium claims in order to deceive Congress and the American people into believing that even though UN weapons inspectors had found no nuclear weapons Iraq did in fact have such weapons since it had secretly sought the fuel for such weapons, and thus Iraq was a threat to national security. Due to that threat Congress should not delay the start of the war or repeal the war resolution. When President Bush and the others made the uranium claims they did not tell the whole truth which would have included the fact that the CIA and the State Department's intelligence bureau had issued warnings that the uranium claim was weak, not credible, should not be made, and that the documents in support of the claim were probably a hoax and a forgery.

The law is clear that fraud is usually proven not by direct evidence but by inference from circumstantial evidence. All the warnings that the CIA issued to the White House and the

[17] The laws that were violated are more fully explained on pages 96-128 in the enclosed report to Holder.

warnings that the State Department's intelligence bureau had issued about the uranium claims, and the motive that President Bush and said officials had to hide those warnings so as not to discredit their uranium claims certainly constitute overwhelming circumstantial evidence that they knew about the warnings but decided not to reveal them in their statements. Thus there is overwhelming circumstantial evidence that they knowingly made fraudulent statements.

The criminal statute 18 U.S.C. § 1001 prohibits making false *or* fraudulent statements to Congress. President Bush made two uranium claims directly to Congress. Those claims were both false (not true) and fraudulent (made with the intent to deceive Congress and not containing the whole truth consisting of all the warnings discrediting the claim). Thus those claims violated said statute.[18] At the end of this report is a draft of an indictment that in Counts One and Two set forth said offenses against President Bush. (That indictment is basically the same as the indictment at the end of the enclosed report submitted to Holder.)

The criminal statute 18 U.S.C. § 371 prohibits conspiring to obstruct the functions of Congress. There is strong circumstantial evidence that President Bush, Vice President Cheney, Libby, Rice, Powell and Rumsfeld entered into a conspiracy agreement to impair, obstruct and interfere with the lawful functions of Congress to evaluate whether it should repeal or modify the war resolution. That conspiracy agreement included using the deceitful and dishonest means of making or instructing others to make false and or fraudulent public statements which said or in effect said that Iraq had sought the uranium fuel for a nuclear bomb, and or which said or in effect said that Iraq had not disclosed that fact to the UN and thus had not complied with Security Council Resolution 1441 that required such a disclosure. The purpose and objective of

[18] It should be noted that 18 U.S.C. § 1001 does not prohibit all false and fraudulent statements to Congress but only statements in certain documents or statements submitted as part of a Congressional review. As more fully explained in the enclosed report to Holder, pages 111-112, including note 500, President Bush's uranium claims meet that criteria.

said statements was to scare Congress so that it would not repeal or modify the war resolution. They committed the overt acts of making said false and fraudulent uranium claims.

The law holds that criminal conspiracies are usually proven not by direct evidence but that a conspiracy agreement or plan may be proven by inference from circumstantial evidence such as a concert of action. The concert of the five false and fraudulent uranium claims that the Bush Administration made within the ten day period between January 20 and January 29, 2003 and the fact that the people making those claims had a close working relationship as the highest officials in the Bush Administration is sufficient proof that they had an agreement or plan to mislead Congress into believing that Iraq had attempted to acquire uranium for a nuclear weapon and thereby obstruct Congress in its function of deciding whether to repeal the war resolution.

Thus there is strong circumstantial evidence that President Bush and said officials violated the criminal statute 18 U.S.C. § 371. At the end of this report is a draft of an indictment that in Count Three sets forth their offense.[19]

Also as more fully explained in the enclosed report to Holder, even though more than five years has elapsed since said officials made the uranium claims, a court would probably rule that under the legal doctrines of equitable tolling and equitable estoppel, the five year statute of limitations, 18 U.S.C. § 3282(a) would be considered tolled or suspended for the above crimes for the years that President Bush and his senior appointees had control over the Justice Department.[20] Such a ruling would be supported by the fact that, as mentioned below, the Bush Justice Department refused requests to investigate the Bush Administration's uranium claims and refused requests to appoint an outside Special Counsel.[21]

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[19] That count also covers the actions of Vice President Cheney and Libby in July 2003 as mentioned on pages 7-12 in the enclosed report to Holder.

[20] *See* pages 80-95 in the enclosed report to Holder.

[21] *See* the following pages 12-14, and pages 71-75 in the enclosed report to Holder.

V. JUSTICE DEPARTMENT'S REFUSAL 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.[22] Attempts were made to initiate an investigation. Congressman Maurice Hinchey, Congressman John Conyers, Jr., Congressman Jerrold Nadler and thirty-seven other Members of Congress in a letter dated September 15, 2005 asked United States Attorney Patrick Fitzgerald 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 that Iraq had sought uranium for a nuclear weapon." 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." 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."

Congressman Nadler in a letter dated October 20, 2005 requested the Bush Justice Department to expand the framework of Fitzgerald's investigation and empower him to examine whether the leak of the CIA agent's name was part of a broader conspiracy to mislead Congress about the necessity of invading Iraq, and he cited as an example the uranium claim that President Bush made in his January 28, 2003 State of the Union Address.

After probably conferring with his superiors at the Bush Justice Department, Fitzgerald informed Congressman Hinchey in a letter dated March 7, 2006 that he did not have the authority to investigate the said uranium claims, and that he did not plan to seek such authority. Fitzgerald's letter to Congressman Hinchey as a practical matter served as the Bush Justice

[22] The Bush Justice Department's refusals to investigate the Bush Administration's uranium claims are more fully set forth on pages 71-75 in the enclosed report submitted to Holder.

Department's denial of Congressman Nadler's request to allow Fitzgerald to investigate President Bush's uranium claim.

Furthermore the undersigned 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 (which are cited in the enclosed report to Holder). In that memorandum the undersigned 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. Fitzgerald never responded to that memorandum. However, Fitzgerald's letter to Congressman Hinchey revealed that he would not investigate these matters.

Also the undersigned sent to all three Attorney Generals in the Bush Administration requests for the appointment of an outside Special Counsel to investigate the Bush Administration's uranium claims but none of those requests were granted.[23]

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[23] The undersigned 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 (which are cited in the enclosed report to Holder). In that memorandum the undersigned 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.

The undersigned 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 2003 and also other uranium claims that Vice President Cheney and Libby made to the press in July 2003 on the condition that their names not be revealed (all of which are cited in the enclosed report to Holder). Again, in that memorandum the undersigned 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 basically ignored the request by telling the undersigned in a letter dated February 7, 2007 that he must first submit the matter through the gate keeping channels of the Federal Bureau of Investigation, which would determine whether an investigation was warranted, and a United States Attorney who would then make a final determination. The content of that letter is provided on page 74 in the enclosed report to Holder. 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. *See* page 74 in the enclosed report to Holder.

The undersigned 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 2003 and also the said uranium claims that Vice President Cheney and Libby made in July 2003 (all of which are cited in the enclosed report to Holder). Again, in that report the undersigned 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.

The above-mentioned requests for the appointment of a Special Counsel were based on the Justice Department regulations, 28 C.F.R. §§ 600.1-.3, which require an Attorney General to appoint an outside Special Counsel to conduct an investigation in situations where the Justice Department has a conflict of interest.[24] Prosecutors in the Bush Justice Department obviously had a conflict of interest in investigating their boss President Bush.

Furthermore Senator Barack Obama in April 2008 during his presidential campaign 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."[25]

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

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[24] Justice Department regulation 28 C.F.R. § 600.1 states:

> "The Attorney General, or in cases in which the Attorney General is recused, the Acting Attorney General, *will appoint a Special Counsel* when he or she determines that criminal investigation of a person or matter is warranted and-
>
> (a) That investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present a *conflict of interest for the Department or other extraordinary circumstances*; and
>
> (b) That under the circumstances, it would be in the *public interest* to appoint an *outside Special Counsel* to assume responsibility for the matter." [Emphasis added.]

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.]

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

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

[25] Will Bunch, *Obama Would Ask His AG to "Immediately Review" Potential of Crimes in Bush White House,* Philadelphia Daily News, Philly.Com (April 14, 2008), available at http://www.philly.com/philly/blogs/attytood/Barack_on_torture.html

> 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."

The undersigned on the first page of his enclosed report to Holder cited the above promise of President Obama and stated:

> 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.

At the end of that report to Holder the undersigned provided the reasons why Holder should appoint an outside Special Counsel to investigate these matters.[26] The undersigned cited the Justice Department regulations that allow for the appointment of a Special Counsel not only in situations involving conflicts of interest but also in situations where there are "extraordinary circumstances." The desire to avoid criticism that an investigation of the Bush Administration by the Obama Justice Department was politically motivated would qualify as such extraordinary circumstances. Outsourcing that investigation to an outside Special Counsel would reduce that criticism while assuring all Americans, as Senator Obama had promised, that no one would be treated as above the law. Also appointing a Special Counsel would assure Americans that the Obama Administration was not ignoring the crimes of a recent President in order to continue an

[26] *See* pages 128-132 in the enclosed report to Holder.

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.

Holder refused to appoint a Special Counsel as requested in the enclosed 155-page report. The Justice Department sent a letter to the undersigned dated August 27, 2009 ignoring the fact that he had asked Holder to appoint an outside Special Counsel but telling him that his "request for an investigation into the Bush Administration alleged Uranium claims" must first be sent to the FBI, which would determine whether an investigation is warranted, and if appropriate the FBI would then refer the matter to a "United States Attorney for a final determination regarding legal action."[27] That response might make sense if the undersigned merely asked for an investigation but he asked Holder to appoint an outside Special Counsel based on the facts in the 155-page report. The Justice Department regulations do not require or even imply that requests for Special Counsels be submitted to anyone other than the Attorney General.[28] Obviously local United States Attorneys do not make the "final determination" regarding the appointment of a Special Counsel but rather that duty falls to the Attorney General.

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[27] A letter dated August 27, 2009 from the Criminal Division of the Justice Department stated:

> Thank you for your recent letter to the Attorney General. I have been asked to respond to you on his behalf. In your letter, you request for an investigation into the Bush Administration alleged Uranium claims.
>
> 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 to the Attorney General. [Emphasis added.]

That letter was not signed nor provided the name of its author.

[28] 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 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.]

The procedure regarding Special Counsel appointments is illustrated by the recent assignment of a prosecutor to investigate torture. In a statement released on August 24, 2009 Holder stated that he had reviewed a report by the CIA's Inspector General and other relevant information, and concluded that said matters warrant opening a preliminary investigation into whether federal laws were violated in connection with the interrogation of specific detainees at overseas locations.[29] Holder assigned a current federal prosecutor to conduct that investigation.

Members of the House Judiciary Committee, including Congressman Nadler, in an earlier letter to Holder dated April 28, 2009, had asked him to appoint an outside Special Counsel to investigate a wide range of torture activities, including acts of authorizing torture.[30] Holder, partially in response to that request, assigned a current federal prosecutor to conduct the above-mentioned preliminary investigation. Justice Department regulations state that when matters are brought to the attention of the Attorney General that may warrant the appointment of a Special Counsel, the Attorney General has three options: appoint a Special Counsel, order a further initial investigation, or assign a current Justice Department prosecutor to handle the matter if the public interest would not be served by removing the matter from the normal processes of the Department.[31] Holder chose the third option. Congressman Nadler has stated that Holder's said assignment of a current prosecutor to conduct the investigation is an "inadequate" step and that Holder must appoint a Special Counsel to investigate all aspects of the interrogation program.[32]

The regulations concerning Special Counsels require Holder to take action on requests for Special Counsels and do not allow him to escape that duty by having someone at the Justice

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[29] Attorney General Eric Holder, *Statement of Attorney General Eric Holder Regarding a Preliminary Review into the Interrogation of Certain Detainees* (August 24, 2009), available at http://www.cfr.org/publication/20095

[30] Letter from Congressman John Conyers, Jr., and fifteen other Members of the Judiciary Committee, to Eric Holder (April 28, 2009), available at http://judiciary.house.gov/news/pdfs/Holder090428.pdf

[31] *See supra* note 28.

[32] Congressman Jerrold Nadler, Press Release, *Nadler Blasts Cheney's Outrageous Defense of Illegal Torture* (August 31, 2009), available at http://www.house.gov/apps/list/press/ny08_nadler/Cheney083109.html

Department tell a person requesting the appointment of a Special Counsel to send that request to the FBI and then a United States Attorney would make a "final determination" on that request.

Furthermore, on July 26, 2009, the undersigned sent drafts of this present report and request to Attorney General Holder and to Lanny A. Breuer, the Assistant Attorney General for the Criminal Division of the Justice Department. In cover letters the undersigned mentioned that the 155-page report that he had sent to Holder was available on the Internet.[33] This present report and request is basically the same as said draft, and the only real difference is that the present report mentions the above recent letter of August 27, 2009 and related matters.

Holder and Breuer, the Assistant Attorney General for the Criminal Division, have not responded to the said draft that the undersigned had sent to them.

VI. LEGAL POWERS OF A GRAND JURY TO INVESTIGATE AND RETURN AN INDICTMENT IN OPEN COURT WITHOUT THE CONSENT OF A GOVERNMENT ATTORNEY

As shown above, the Justice Department has refused to conduct an investigation or appoint an outside Special Counsel. Thus the grand jury should conduct its own investigation in order to maintain the rule of law in this country and to protect the most basic of legal principles, which is that no one, not even Presidents, should be treated as above the law. As noted by the Court of Appeals for the District of Columbia Circuit in the case of *Nixon v. Sirica*:

> [The President] is not above the law's commands. With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law. Sovereignty remains at all times with the people, and they do not forfeit through elections the right to have the law construed against and applied to every citizen.[34]

Certainly this principle that Presidents are not above the law has its greatest significance in situations where Presidents start wars.

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[33] As noted earlier, *supra* note 1, that 155-page report is available at http://www.democrats.com/uranium-special-counsel (in the second paragraph click on 155 page report).

[34] *Nixon v. Sirica*, 487 F.2d 700, 711 (D.C. Cir. 1973) (internal citation and internal citation marks omitted).

Concerning a grand jury's powers, the court in the above case stated:

> We reject the contention, pressed by counsel for the President, that the Executive's prosecutorial discretion implies an unreviewable power to withhold evidence relevant to a grand jury's criminal investigation. The federal grand jury is a constitutional fixture in its own right, legally independent of the Executive. A grand jury may, with the aid of judicial process, *call witnesses and demand evidence without the Executive's impetus.* If the grand jury were a legal appendage of the Executive, it could hardly serve its historic functions as a shield for the innocent and a *sword against corruption in high places.*[35]

Judge Sirica of the District Court for the District of Columbia in the case of *In Re Report & Recommendation of June 5, 1972 Grand Jury* stated:

> [W]ithin certain bounds, the grand jury may act independently of any branch of government. *The grand jury may pursue investigations on its own without the consent or participation of a prosecutor.* The grand jury holds broad power over the terms of the charges it returns, and its decision not to bring charges is unreviewable. Furthermore, the grand jury may insist that prosecutors prepare whatever accusations it deems appropriate and *may return a draft indictment even though the government attorney refuses to sign it*.[36]

Thus a grand jury can return an indictment even if a federal prosecutor refuses to sign it.

Furthermore, under the rules it only takes 12 grand jurors to vote in favor of returning an indictment, and when a grand jury votes in favor of returning an indictment it must return that indictment not in secret but in open court. Rule 6(f) of the Federal Rules of Criminal Procedure states:

> A grand jury may indict only if at least 12 jurors concur. The grand jury – or its foreperson or deputy foreperson – *must return the indictment to a magistrate judge in open court.* If a complaint or information is pending against the defendant and 12 jurors do not concur in the indictment, the foreperson must promptly and in writing report the lack of concurrence to the magistrate judge. [Emphasis added.]

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35 *Id.* at 712, note 54 (internal citations omitted, emphasis added).

36 *In Re Report & Recommendation of June 5, 1972 Grand Jury*, 370 F.Supp. 1219, 1222 (D.D.C. 1974) (citations omitted, emphasis added). A district court in the case of *In Re Grand Jury Proceedings (Rocky Flats Grand Jury)*, 813 F.Supp. 1451, 1461 (D.Colo. 1992), also stated that a grand jury can pursue investigations on its own without the consent or participation of a prosecutor. However, this later case partially disagrees with Judge Sirica's decision since the later case states that a grand jury cannot return an indictment without the signature and approval of a United States Attorney. *Id.* at 1461. As explained herein the rules do allow a grand jury to return an indictment without the signature or approval of a government attorney.

That rule does not state that a 13th vote is needed to indict - the vote of a government attorney. In fact under Rule 6(d)(2), the government attorney cannot be present during a grand jury's deliberations and its voting on an indictment. That rule states: "No person other than the jurors, and any interpreter needed to assist a hearing-impaired or speech-impaired juror, may be present while the grand jury is deliberating or voting."

Under the later Rule 7, the federal prosecutor or government attorney then signs the indictment returned in open court. Rule 7(c) states: "The indictment … must be a plain, concise, and definitive written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government." As noted above, the government attorney can refuse to sign the indictment.[37] That refusal prevents any subsequent criminal prosecution in open court. The Court of Appeals for the Seventh Circuit in the case of *United States v. Wright* stated: "The primary purpose served by affixing the U.S. Attorney's signature to an indictment is to indicate that he joins with the Grand Jury in instituting a criminal proceeding. Without his agreement no criminal proceeding could be brought on the indictment."[38] A district court in the case of *United States v. Kouri-Perez* stated: "By signing the indictment, the attorney for the government unites the government with the grand jury for the purpose of commencing the criminal proceeding."[39]

However, when a grand jury returns an indictment in *open court* under Rule 6(f) and a government attorney refuses to sign it under Rule 7(c), then that refusal or lack of signature on the returned indictment becomes a matter of public record. Rule 6(e)(2) states that "matter[s] occurring before the grand jury" are not to be revealed by grand jurors or government

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37 *In Re Report & Recommendation of June 5, 1972 Grand Jury, supra*, 370 F.Supp. at 1222.

38 *United States v. Wright*, 365 F.2d 135, 137 (7th Cir. 1966).

39 *United States v. Kouri-Perez*, 47 F.Supp.2d 164, 166 (D. Puerto Rico 1999).

attorneys,[40] but such secrecy involving matters that occurred before the grand jury obviously does not cover proceedings in open court when the grand jury returns the indictment. Rule 6(f) clearly states that the indictment must be returned in *open court* and does not state that the indictment is to be returned in secret or under seal.[41]

In the case of *In Re Grand Jury January, 1969* a district court considered a situation where the deputy foreman of the grand jury in open court read to the court a paper that stated that the grand jury had conducted an investigation and was prepared to return an indictment but that although the United States Attorney concurred the Attorney General refused to authorize him to sign an indictment.[42] (The Attorney General is the superior of United States Attorneys and is the head of the Justice Department.) The deputy foreman also stated that the grand jury was requesting that appropriate officials at the Justice Department draft and sign formal charges identical to or similar to the draft indictment that the grand jury was presenting to the court.[43] The deputy foreman then delivered two sealed envelopes to the court, one of which contained a proposed indictment that had been drafted but which not had been signed by the deputy foreman

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[40] Rule 6(e)(2) states:

> (A) No obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B).
>
> (B) Unless these rules provide otherwise, the following persons must not disclose a matter occurring before the grand jury:
>
> (i) a grand juror;
> (ii) an interpreter;
> (iii) a court reporter;
> (iv) an operator of a recording device;
> (v) a person who transcribes recorded testimony;
> (vi) an attorney for the government; or
> (vii) a person to whom disclosure is made under Rule 6(e)(3)(A)(ii) or (iii).

[41] Once the grand jury returns the indictment in open court the magistrate judge may temporarily seal it but only for the purpose of hiding the indictment from a defendant named in the indictment, who upon learning that the grand jury has indicted him or her, might flee. *See* Rule 6(e)(4).

Also, unlike an indictment that a grand jury must return in open court and which is immediately available to the public, when a grand jury issues a report that does not make any accusations then it is up to the court to decide whether that report should be disclosed to others and or to the public. *See In Re Report & Recommendation of June 5, 1972 Grand Jury, supra*, 370 F.Supp. at 1226-1231.

[42] *In Re Grand Jury January, 1969*, 315 F.Supp. 662, 664 (D.Md. 1970). The original foreman of the grand jury was no longer on the grand jury. *Id.* at 664, note 1.

[43] *Id.* at 664.

or the United States Attorney.[44] The court then sealed the proposed indictment for the time being and instructed the United States Attorney to send a copy of the proposed indictment to the Attorney General and suggested that the Attorney General give it consideration.[45] The court stated that it would eventually rule on whether the proposed indictment should be made public.[46]

Thereafter, three people filed a petition in court in which they stated that they had reason to believe that they had been the subject of the grand jury's investigation and were mentioned in a paper (the proposed indictment) that had been earlier given to the court.[47] They did not use their real names in the petition.[48] They petitioned the court to suppress from public disclosure and to expunge from the court's records the proposed indictment that the grand jury had filed.[49]

The petitioners then obtained a ruling from a higher court, the Court of Appeals for the Fourth Circuit, that ordered the district court not to conduct any public hearing on the proposed indictment of the petitioners but to conduct any hearing in camera (closed to the public).[50]

Thereafter in the district court the grand jury "met, and after their session came into *open court* …. [and i]n response to the customary question by the Clerk, whether they had agreed upon any indictments, they replied in the affirmative, and delivered to the Court two envelopes."[51] Unlike the earlier envelopes these envelopes apparently were not sealed. The court then pursuant to the above order of the Fourth Circuit closed the courtroom proceedings to the public.[52] One of the envelopes contained an indictment that was identical to the earlier indictment, and it was again not signed by the United States Attorney or by any attorney for the

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44 *Id.*
45 *Id.* at 665.
46 *Id.*
47 *Id.* at 666.
48 *Id.*
49 *Id.*
50 *Id.* at 667-668.
51 *Id.* at 668 (emphasis added).
52 *Id.*

government but this time it was signed by the deputy foreman.[53] The United States Attorney stated that he favored the indictment but the Justice Department told him not to sign it.[54] After the second indictment was filed, the court made available that indictment to counsel for those petitioners who had moved to suppress and expunge the said earlier proposed indictment (which was still under seal) and they then filed an additional petition to suppress and expunge the later indictment that the court disclosed to them.[55]

The court held an in camera hearing on the petitions to suppress and expunge the indictments.[56] Although the hearing was in camera the court ruling was made public.[57]

The court ruled that a government attorney can refuse to sign an indictment returned by a grand jury and such an indictment that is not signed by a government attorney is not a valid indictment and cannot institute a criminal prosecution.[58] However on the issue of whether to suppress and expunge the second indictment that the deputy foreman had signed and returned in open court in an unsealed envelope, the court ruled that even though that indictment "delivered to the Court by the Grand Jury … is not a valid indictment, and is not sufficient to begin a criminal prosecution, it does not follow that the Grand Jury did not have the power to deliver that document to the Court."[59] The court compared the grand jury's power to return such an indictment to its "power to make presentments, sometimes called reports, calling attention to certain actions of public officials, whether or not they amounted to a crime."[60] The court quoted with approval another court and also another judge who stated:

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53 *Id.*
54 *Id.*
55 *Id.* at 668-669.
56 *Id.* at 669.
57 *Id.* at 662-681.
58 *Id.* at 674.
59 *Id.* at 675.
60 *Id.*

> [G]rand jury presentments of public affairs serve a need that is not met by any other procedure. The grand jury provides a readily available group of representative citizens of the county empowered, as occasion may demand, to voice the conscience of the community.
>
> ….
>
> The powers of the Executive [branch of the government and its Justice Department] are so awesome in determining those whom it will not prosecute, that where there is a difference between the Grand Jury and the Executive, this determination and the resulting conflict of views should be *revealed in open court.* With great power comes great responsibility. Disclosure of this difference of view and the resulting impasse would subject this decision of the Executive [not to prosecute] to the *scrutiny of an informed electorate. The issue would be clearly drawn and the responsibility, both legally and in the public mind, plainly fixed.*[61]

The court stated that the public should know that no persons holding a federal public office were charged in the indictment but the "matters dealt with in the indictment do concern the public business."[62] The court also stated that there had been discussion and disclosure about the matter in the media, some true and some not true.[63] The court stated that the people who have been investigated have been disclosed while there have been rumors in the press naming people who never were investigated.[64]

The court ruled that "the substance of the charges in the indictment should be disclosed, omitting certain portions as to which the Court, in the exercise of its discretion, concludes that the public interest in disclosure is outweighed by the private prejudice to the persons involved, *none of whom are charged with any crime in the proposed indictment.*"[65] The court then filed with its opinion a summary of the indictment, which included the names of the defendants charged in the indictment, the offense of conspiracy to defraud the United States that was charged, and the basic facts that included the names of some people not charged in the

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61 *Id.* at 675, 677 (citations omitted, emphasis added).
62 *Id.* at 678.
63 *Id.*
64 *Id.*
65 *Id.* at 678-679 (emphasis added).

indictment.[66] The court also made public a report of the Justice Department explaining its reasons why it had instructed the United States Attorney not to sign the indictment.[67] The court granted the petitioners' petitions to the extent that it expunged from the record and ordered sealed all the other matters including the matters that the deputy foreman had presented to the court that contained names that the court believed should not be made public.[68]

Thus the court basically ruled that an indictment returned by a grand jury but not signed by a government attorney should be a matter of public record as long as it does not contain matters that the court in its discretion believes violates the privacy rights of those *not charged in the indictment.* If the indictment contains such matters, the court can suppress the indictment but provide a summary of it that does not contain such matters. However, if the indictment contains only the names of the defendants charged in the indictment, then the indictment itself should be disclosed. In the present situation if the grand jury returns the indictment at the end of this report, that indictment already meets the above criteria for disclosure since it does not contain the names of anyone not charged in the indictment other than the name of Saddam Hussein. Furthermore, that indictment and the 155-page report in support of it are already available in the public record on the Internet.[69]

Furthermore, it is important to note that the court in the above case was not acting on its own initiative but was only issuing a ruling that was in response to the said petitions filed in court to suppress and expunge the indictment. If no such petition is filed, then obviously the indictment that the grand jury returns in *open court* is immediately a matter of pubic record.

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66 *Id.* at 679-680.
67 *Id.* at 679, 680-681.
68 *Id.* at 679.
69 *See supra* note 1.

In the above case, the court relied heavily on the views expressed by the various judges on the Court of Appeals for the Fifth Circuit in the case of *United States v. Cox* and stated: "The opinions in *Cox* furnish a guide. Five of the seven Judges thought there should be a disclosure [of the refusal of a government attorney to concur with the grand jury's decision to commence a prosecution.]"[70] In *Cox* the grand jury wanted the United States Attorney to prepare indictments against some people under investigation but the United States Attorney refused to draft or sign such indictments because the Acting Attorney General had instructed him not to draft or sign the indictments.[71] The lower district court ordered the United States Attorney to draft any such indictments voted upon by the grand jury and to sign such indictments.[72] The United States Attorney stated that he would not follow the court's order and the court then held him in contempt.[73]

On appeal, the Court of Appeals for the Fifth Circuit ruled that the United States Attorney must draft such indictments for the grand jury but has the discretion not to sign them.[74] The Court of Appeals reversed the contempt citation since the district court had ordered the United States Attorney to not only prepare the indictment but also to sign it.[75] However, the Court of Appeals ruled that the "way is open for relief [and further contempt proceedings] if a further order is entered with respect to the rendering of assistance to the grand jury by the United States Attorney in the preparation of the indictments."[76] Thus the court could hold the United States Attorney in contempt if he or she did not assist the grand jury such as by preparing indictments requested by the grand jury.

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70 *In Re Grand Jury January, 1969*, *supra*, 315 F.Supp. at 676, citing *United States v. Cox*, 342 F.2d 167 (5th Cir. 1965).
71 *United States v. Cox*, *supra*, 342 F.2d at 169.
72 *Id.*
73 *Id.* at 169-170.
74 *Id.* at 171-172, 181.
75 *Id.* at 172.
76 *Id.* at 173.

The Court of Appeals also ruled that without the signature of the government attorney "there can be no criminal proceeding brought upon an individual."[77] The Court of Appeals, as noted above, also ruled that any such refusal of a government attorney to concur with the grand jury's decision to commence a prosecution should be disclosed to the public in open court.[78]

The Court of Appeals for the District of Columbia Circuit in the case of *Nixon v. Sirica* implied that the refusal of the government to concur with a grand jury's decision to commence a prosecution should be a matter of public record. The court stated:

> [In *United States v. Cox, supra*, a judge recognized a prosecutor's unfettered discretion but also] … recognized the grand jury's independent and "plenary power to inquire, to summon and interrogate witnesses, and to present either findings and a report or an *accusation in open court* by presentment." As a *practical*, as opposed to legal matter, the Executive may, of course, cripple a grand jury investigation by denying staff assistance to the jury. And the Executive may refuse to sign an *indictment*, thus precluding prosecution and, presumably, effecting a permanent sealing of the grand jury *minutes* [that recorded the matters that had occurred before the grand jury]. These choices remain open to the President. But it is he who must exercise them.[79]

By mentioning both a grand jury's indictment and its minutes, but only stating that the Executive could effectively seal a grand jury's minutes but not also stating that the Executive could effectively seal a grand jury's indictment, the court clearly implied that the Executive could not effectively seal a grand jury's indictment, especially since the court mentioned that a grand jury could present its accusations in open court.

Furthermore, the law does not discourage a citizen from seeking to appear before a grand jury since the statute that makes it a crime to attempt to influence the action of a grand jury by

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[77] *Id.* at 172.

[78] *See In Re Grand Jury January, 1969, supra*, 315 F.Supp. at 676-678, citing opinions of Judges Wisdom, Rives, Gewin, Bell, and Brown in *United States v. Cox, supra*, 342 F.2d 188-189, 179, 185 .

[79] *Nixon v. Sirica, supra*, 487 F.2d at 712-713, note 54 (internal citations omitted, second emphasis in original, remaining emphasis added).

writing or communicating to a grand juror, 18 U.S.C. § 1504, also states: "Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury."[80]

This grand jury can invite any citizen to appear before it since as noted by the District Court for the District of Columbia in the case of *Simpson v. Reno* an "individual may appear before a grand jury only at the *invitation of the grand jury,* the prosecutor, or the court of the appropriate jurisdiction in its supervisory capacity."[81] The Court of Appeals for the Eighth Circuit in the case of *In Re Application of Wood* stated:

> The general rule is, of course, that an individual cannot bring accusations before a grand jury unless invited to do so by the prosecutor or the grand jury. A well-recognized exception to this rule is that the court in its supervisory power can authorize an individual to appear before a grand jury if it feels that the circumstances require.[82]

In that case in which someone accused an FBI agent of perjury, the court held that if the United States Attorney did not resubmit the perjury allegations to the grand jury, then the lower district court could order that the person who made the perjury charges be allowed to appear before the grand jury to personally present his allegations of perjury.[83]

This present grand jury has the power to and should conduct an investigation into the Bush Administration's uranium claims even though the Justice Department does not consent to such an investigation. The grand jury should subpoena the people listed in the enclosed report and ask them the obvious *Watergate* type questions of what did they know about the uranium claims and the warnings discrediting those claims, when did they know it, who told them about the uranium claims and the warnings, and who did they tell, and why were the claims made.[84]

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[80] 18 U.S.C. § 1504. It might be contended that anyone who attempted to prevent this report from being submitted to the grand jury would be committing the crime of obstructing justice as set forth in 18 U.S.C. § 1503.

[81] *Simpson v. Reno*, 902 F.Supp. 254, 257 (D.D.C. 1995) (emphasis added) (citing *In Re Application of Wood*, 833 F.2d 113 (8th Cir. 1987).

[82] *In Re Application of Wood*, *supra*, 833 F.2d at 116.

[83] *Id.* at 114-116.

[84] *See* pages 79-80 in the enclosed report to Holder.

Even without the testimony of such witnesses, the grand jury should return the indictment at the end of this report. As noted in the enclosed 155-page report, a grand jury does not need proof beyond a reasonable doubt to return an indictment but only needs to find that there is probable cause to believe that a crime was committed, which can be based on hearsay evidence such as the enclosed 155-page report.[85] The grand jury could invite the undersigned to appear before the grand jury to present that report and to answer any questions that the grand jury might have about it.

After signing the indictment the grand jury should return it in *open court* pursuant to the above Rule 6(f) even if a government attorney refuses to sign it.

Also if this grand jury commences and conducts its own investigation by issuing subpoenas to the people mentioned in the enclosed report, and or returns in open court the indictment at the end of this report, then Holder might reconsider his position and appoint an outside Special Counsel.

As mentioned earlier, any questions that the grand jury might have on these matters can be submitted to the judge who impaneled the grand jury.

However, the court's powers over the grand jury are limited. As the District Court for the District of Columbia has already stated in the case of *Simpson v. Reno*:

> The court's supervisory power over a grand jury is limited by the doctrine of separation of powers. Given the constitutionally-based independence of each of the three actors – court, prosecutor and grand jury – a court may not exercise its supervisory power in a way which encroaches on the prerogatives of the other two unless there is a clear basis in law and fact for doing so.[86]

The Supreme Court in the case of *United States v. Calandra* stated: "[T]he grand jury has been accorded wide latitude to inquire into violations of criminal law. No judge presides to

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[85] *See* page 79 in the enclosed report to Holder.

[86] *Simpson v. Reno, supra*, 902 F.Supp. at 257 (internal citations and citation marks omitted, emphasis added).

monitor its proceedings. It deliberates in secret and may *determine alone* the course of its inquiry."[87]

VII. CONCLUSION

Therefore the undersigned requests the grand jury to commence an investigation into the matters set forth in this report and in the enclosed 155-page report, and to invite him to appear before the grand jury to explain these matters. (The grand jury could send any communications to the undersigned through the Clerk's Office or the United States Attorney's Office.) The undersigned also requests the grand jury to sign the indictment at the end of this report and to return that indictment in open court pursuant to Rule 6(f) of the Federal Rules of Criminal Procedure even if a government attorney refuses to sign the indictment.

Surely this is a serious matter and warrants the attention of the grand jury. As mentioned earlier, forty Members of Congress asked United States Attorney Fitzgerald to investigate the Bush "Administration's false and fraudulent claims … that Iraq had sought uranium for a nuclear weapon" and whether those claims 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 the functions of Congress." Congressman Nadler asked the Justice Department to allow Fitzgerald to investigate, among other things, whether the uranium claim that President Bush made in his 2003 State of the Union Address was part of a conspiracy to mislead Congress about the necessity of invading Iraq.

President Bush's own press secretary Scott McClellan has stated that President Bush knew that the American people would not support a war launched for the real reason that President Bush wanted to start the war and therefore President Bush used the threat of WMDs as the reason for the war that he gave to the American people. According to McClellan, President

[87] *United States v. Calandra*, 414 U.S. 338, 343 (1974) (emphasis added).

Bush not only hid his real motive for starting the war but also shaded the truth regarding the threat of WMDs and manipulated sources of public opinion.

The grand jury needs to conduct its own investigation in order to maintain the rule of law and to protect the most basic of legal principles, which is that no one, not even Presidents, should be treated as above the law. Such action is not only required to protect the rule of law but to protect our nation and the world from Presidents who believe that they can start wars, perhaps even nuclear wars, based on lies because no one will hold them accountable for those lies. Furthermore, until all Presidents are held accountable, no President will have credibility.

Respectfully Submitted

Francis T. Mandanici

Clarification, December 15, 2009. The last paragraph on page 25 should have been clearer and should have stated:

Although the court in the above case on its own initiative at the beginning kept under seal an unsigned sealed indictment that the grand jury delivered in court, the court's ruling regarding the release of the substance of the later indictment that the grand jury actually signed and returned in open court not in a sealed envelope, was a ruling that the court did not make on its own initiative. Rather that ruling was in response to the petitions and actions of the petitioners. If no such petitions are filed, then obviously an indictment that a grand jury signs and returns in open court under Rule 6(f) is immediately a matter of public record.

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, not credible, baseless, 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, not credible, baseless, 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, not credible, baseless, 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

_____ _____

United States Attorney Foreperson