

# **The Uranium Grounds For Impeachment And For A Special Counsel: A Report To Congress**

## **Summary**

President George W. Bush and senior members of his Administration made, or were complicit in making, false and fraudulent public statements that Iraq had sought uranium for a nuclear weapon. Five of the statements were made in January 2003 prior to the start of the war in Iraq to scare Congress so that it would not repeal or modify its earlier resolution that authorized President Bush to start the war. President Bush made two statements in documents that he gave to Congress and violated the criminal statute 18 U.S.C. § 1001 that prohibits making false and fraudulent statements to Congress. President Bush and the other officials by their conduct also violated the criminal statute 18 U.S.C. § 371 that prohibits conspiring to defraud Congress, which includes conspiring to obstruct its functions. As demonstrated in this report, said crimes of lying to Congress and obstructing its functions on a matter as serious as war are certainly impeachable offenses.

At the end of this report are articles of impeachment against President Bush and Vice President Richard Cheney based on their involvement in the false and fraudulent uranium claims. This report is similar to a report that the House Judiciary Committee might issue recommending impeachment based on the commission of said crimes. Based on this report, a Member of Congress should file said or similar articles of impeachment. Furthermore, House rules allow citizens to petition Congress and to submit a resolution incorporating articles of impeachment, which a Member of Congress can then formally submit even if the Member is personally opposed to impeachment. As an alternative first step toward impeachment Congressional committees could hold oversight hearings on the false and fraudulent uranium claims that the Administration made to Congress. Also said committees or individual Members of Congress could request the Justice Department to appoint an outside Special Counsel.

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The author is a lawyer in Connecticut. He has raised many of the points mentioned herein in previous articles entitled *Bush's Uranium Lies: The Case for a Special Prosecutor that Could Lead to Impeachment*, and *The Uranium Articles of Impeachment (and Memo)*.

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## I. INTRODUCTION: BASIC FACTS AND IMPEACHMENT PROCEDURES

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

To support that claim that Iraq had weapons of mass destruction, the Administration prior to the war repeatedly made the specific claim that Iraq had sought to acquire the uranium fuel for a nuclear weapon. President Bush made two statements directly to Congress about Iraq seeking uranium and senior members of his Administration made three similar public statements that were aimed at Congress. The purpose behind the five uranium claims that the Administration made prior to the war was to scare Congress into believing that Iraq was a nuclear threat and thereby thwart any efforts by Members of Congress to repeal or modify the Congressional resolution that had empowered President Bush to use military force in Iraq.<sup>4</sup> At the time of those statements, there were Congressional efforts to delay the start of the war so that United Nations (UN) weapons inspectors, who had so far found no weapons of mass destruction in Iraq, could finish their work. Even after the start of the war, Vice President Cheney pushed the uranium claim as a rationale for having started the war.

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<sup>1</sup> HOUSE COMMITTEE ON GOVERNMENT REFORM MINORITY STAFF, 108TH CONG., IRAQ ON THE RECORD 7 (2004) [hereinafter HOUSE GOV'T REFORM COMM. MIN. REPORT: IRAQ].\* Reports, documents, and other matters marked with an \* in the footnotes indicate that the URL address for said matters is provided at the end of this report. This is done for editing purposes since the author provides numerous URL addresses.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 9.

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

The public record shows not only that said officials made or directed others to make said uranium claims, but also shows that the claims were false and fraudulent.<sup>5</sup> The public record also provides the circumstantial evidence that proves that they knew the claims were false and fraudulent.

Under the criminal statute 18 U.S.C. § 1001 it is a felony punishable by up to five years imprisonment to make false and fraudulent statements to Congress.<sup>6</sup> Under the criminal statute 18 U.S.C. § 371 it is a felony punishable by up to five years imprisonment to conspire to defraud Congress,<sup>7</sup> which includes conspiring to obstruct its functions, such as the function that Congress had prior to the war to consider whether to repeal the war resolution or modify it so as to delay the start of the war at least until UN weapons inspectors finished their inspections.

This report demonstrates that President Bush violated 18 U.S.C. § 1001, and that he, Vice President Cheney and others violated 18 U.S.C. § 371. By committing said felonies, President Bush and Vice President Cheney committed the impeachable offenses set forth in the Articles of Impeachment at the end of this report.

The Constitution states that the Congress can impeach the President and Vice President for “Treason, Bribery, or other high Crimes and Misdemeanors.”<sup>8</sup> The rules guide for the House of Representatives, *House Practice*, states: “The interpretation that has been placed on the words ‘high Crimes and Misdemeanors’ is a *broad* one. The framers of the Constitution adopted the phrase from the English practice.... An offense must be *serious* or substantial in nature to provide grounds for impeachment.”<sup>9</sup>

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<sup>5</sup> The matters in the public record that the author cites in this report are available on the Internet and as mentioned in note 1 the author provides the URL addresses at the end of the report.

<sup>6</sup> 18 U.S.C. § 1001 (2000).

<sup>7</sup> 18 U.S.C. § 371 (2000).

<sup>8</sup> U.S. CONST. art. I, §§ 2-3, art. II, § 4.

<sup>9</sup> HOUSE PRACTICE (A GUIDE TO THE RULES, PRECEDENTS AND PROCEDURES OF THE HOUSE), ch. 27, Impeachment § 3, at 590 (emphasis added).\*

A felony is a serious crime usually punishable by a sentence of more than one year imprisonment, and a misdemeanor is a crime less serious than a felony and usually punishable by a fine and or a brief sentence.<sup>10</sup> Professor Jonathan Turley in a prepared statement advised Congress that ‘high crimes and misdemeanors’ encompass criminal felonies committed with premeditation since such crimes show an “open contempt for the law.”<sup>11</sup> However, Professor Laurence Tribe advised Congress that not all felonies should be considered ‘high Crimes and Misdemeanors’ but only those that are “major offenses against our very system of government ... or [which are] grave wrongs in pursuit of governmental power.”<sup>12</sup> He further stated that ‘high Crimes and Misdemeanors’ were matters that involved “grave abuses of official power – [such as] abuses entailing encroachment on the prerogatives of another branch of government.”<sup>13</sup>

Under either a broad or a narrow view of what constitutes an impeachable offense, lying to and defrauding Congress on a matter of war would qualify as impeachable offenses. Committing the felonies of lying to and defrauding Congress shows not only contempt for Congress but also contempt for the law. Lying to and defrauding Congress in order to thwart any efforts of Congress to modify or repeal a war resolution is a major offense against our system of government, a grave wrong in pursuit of governmental power, and not only encroaches on but tramples on the prerogative of Congress under the Constitution to declare war.<sup>14</sup>

Impeachments are criminal in nature. *House Practice* states: “An impeachment is instituted by a written accusation, called an ‘Article of Impeachment,’ which states the offense

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<sup>10</sup> BLACK’S LAW DICTIONARY 651, 1020 (8th ed. 2004).

<sup>11</sup> JONATHAN TURLEY, PREPARED STATEMENT OF JONATHAN TURLEY, SHAPIRO PROFESSOR OF PUBLIC INTEREST LAW, GEORGE WASHINGTON UNIVERSITY SCHOOL OF LAW, S. DOC. NO. 106-3, vol. XX, 254, 275 (1999).\* The above Senate document containing said statement has the statements of many legal scholars concerning what constitutes grounds for impeachment.

<sup>12</sup> LAURENCE H. TRIBE, PREPARED STATEMENT OF LAURENCE H. TRIBE, TYLER PROFESSOR OF CONSTITUTIONAL LAW, HARVARD UNIVERSITY LAW SCHOOL, DEFINING “HIGH CRIMES AND MISDEMEANORS”: BASIC PRINCIPLES, S. DOC. NO. 106-3, vol. XX, 221, 225 (1999).\*

<sup>13</sup> *Id.* at 226.

<sup>14</sup> U.S. CONST. art. I, § 8 (Congress has the power “[t]o declare War”.)

charged. The articles serve a purpose similar to that of an indictment in an ordinary criminal proceeding.”<sup>15</sup> If the House by a simple majority votes for impeachment the matter is sent to the Senate for trial where a vote of two thirds present is needed for a conviction, which results in the removal from office.<sup>16</sup> The impeachment proceedings against President William Jefferson Clinton<sup>17</sup> and President Richard M. Nixon<sup>18</sup> concerned alleged violations of the criminal law. Thus impeachment proceedings are regularly based on alleged criminal violations.

To start formal impeachment proceedings Members of the House can file two types of resolutions, either a resolution to authorize an investigation into whether grounds exist for impeachment or an actual resolution to impeach a certain official.<sup>19</sup>

Furthermore citizens and state legislatures can start the impeachment process. *House Practice* states: “In most cases, impeachment proceedings .... [are initiated by Members of

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<sup>15</sup> HOUSE PRACTICE, *supra* note 9, ch. 27, Impeachment § 1, at 588 (citation omitted).

<sup>16</sup> U.S. CONST. art. I, §§ 2-3, art. II, § 4; T.J. HALSTEAD, CONGRESSIONAL RESEARCH SERVICE REPORT FOR CONGRESS, AN OVERVIEW OF THE IMPEACHMENT PROCESS, CRS NO. 98-806A, at 3, 5-6 (2005).\*

<sup>17</sup> Independent Counsel Kenneth Starr initiated the impeachment proceedings against President Clinton when he submitted the *Starr Report* to the House of Representatives. H.R. DOC. NO. 105-310 (1998).\* Starr offered eleven grounds for impeachment including that President Clinton lied under oath to a grand jury (ground two). *Id.*, Grounds, Introduction. Starr stated: “Federal law requires a witness testifying under oath to provide truthful answers. The intentional failure to provide truthful answers is a crime punishable by imprisonment and fine.” *Id.*, Ground I. Starr cited the criminal statutes 18 U.S.C. §§ 1621, 1623 (1994). *Id.*, Ground I, including note 3. In grounds five to seven, Starr claimed that in a civil case President Clinton obstructed or endeavored to obstruct justice. *Id.*, Grounds, Introduction. Concerning endeavoring to obstruct justice, Starr stated: “An effort to obstruct justice by withholding the truth from the legal process – whether by lying under oath, concealing documents, or improperly influencing a witness’s testimony – is a federal crime.” *Id.*, Ground V. Starr cited the criminal statutes 18 U.S.C. §§ 1503, 1512, 1621 (1994). *Id.*, Ground V, including note 214. The House Judiciary Committee issued a report recommending that the House impeach President Clinton and that the House submit four articles of impeachment to the Senate including Article I that alleged that President Clinton provided perjurious, false, and misleading testimony to a grand jury, and Article III that alleged that he obstructed justice regarding a federal civil rights case. H.R. REP. NO. 105-830, at 1-5 (1998).\* The House voted to impeach President Clinton on said Articles I and III. H.R. Res. 611, 105th Cong. (1998).\* The Senate adjudged that President Clinton was not guilty of both articles. 145 CONG. REC. 26, S1458-S1459 (1999).\*

<sup>18</sup> In 1974 the House Judiciary Committee issued a report recommending three articles of impeachment against President Nixon. H.R. REP. NO. 93-1305, at 1-4 (1974).\* The first article charged that President Nixon obstructed the investigation into the burglary at the headquarters of the Democratic National Committee by, among other things, making or causing to be made false or misleading statements to lawfully authorized investigative officers, and withholding relevant and material evidence or information from them. *Id.* at 1-3. Said actions would violate the criminal statute prohibiting the obstruction of justice, 18 U.S.C. § 1503. President Nixon resigned prior to further impeachment proceedings.

<sup>19</sup> HALSTEAD, *supra* note 16, at 2.

Congress, but o]ther methods of setting an impeachment in motion in the House include ... [c]harges initiated by a petition from one or more citizens and referred to committee .... [and c]harges transmitted from the legislature of a State.”<sup>20</sup> According to the Congressional Research Service: “The impeachment process may be triggered by non-Members, such as ... by a charge from a State or territorial legislature ... or ... by petition.”<sup>21</sup> *House Practice* states: “Petitions and memorials addressed to the House are delivered to the Clerk and may be presented by the Speaker as well as by any Member. A Member may present a petition from the citizens of a State other than his own.”<sup>22</sup> Also a Member can reveal that a citizen submitted the legislation.

The House does not permit the names of citizens requesting the introduction of a bill to be printed in the *Congressional Record*, but the rules do permit the words ‘by request’ to be entered on the Journal and printed in the *Record*. These words appear following the name of the primary sponsor or the names of some or all of the initial cosponsors.<sup>23</sup>

Also, it is important to note that a “Member may introduce a bill even though he is personally opposed to its passage.”<sup>24</sup>

Thus a Member who has not yet made up his or her mind concerning impeachment, or even opposes impeachment, can file a resolution for impeachment submitted by a citizen or state legislature.<sup>25</sup> The Member can also simply insert the phrase “by request”.

There is no set standard that must be satisfied for a Member of the House to actually vote for impeachment, although Congress used the standard of substantial and credible information

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<sup>20</sup> HOUSE PRACTICE, *supra* note 9, ch. 27, Impeachment § 6, at 598 (citations omitted).

<sup>21</sup> HALSTEAD, *supra* note 16, at 2 (footnotes omitted).

<sup>22</sup> HOUSE PRACTICE, *supra* note 9, ch. 6, Bills and Resolutions § 6, at 172 (citations omitted).\* The *Rules of the House of Representatives* state: “If a Member ... has a petition ... to present, he shall endorse his name, deliver it to the Clerk, and may specify the reference or disposition to be made thereof.” RULES OF THE HOUSE OF REPRESENTATIVES, Rule XII, clause 3, at 599, H.R. DOC. NO. 108-241 (2005) [hereinafter HOUSE RULES].\*

<sup>23</sup> HOUSE PRACTICE, *supra* note 9, ch. 6, Bills and Resolutions § 6, at 172 (citation omitted). “When a bill or resolution is introduced ‘by request,’ those words shall be entered on the Journal and printed in the *Congressional Record*.” HOUSE RULES, *supra* note 22, Rule XII, clause 7, at 606.

<sup>24</sup> HOUSE PRACTICE, *supra* note 9, ch. 6, Bills and Resolutions § 6, at 172.

<sup>25</sup> There is certainly significant public support for such a resolution. A poll taken in October 2006 revealed that 51% of those polled believed that Congress should make impeachment a priority of some type, either top or lower. See Marcus Mabry, *Are the Faithful Losing Faith?*, NEWSWEEK, Oct. 21, 2006.\*

when providing a standard for impeachment referrals to the House by court appointed independent counsels under the former Independent Counsel Reauthorization Act.<sup>26</sup>

This report supports a resolution for impeachment rather than for an investigation since the public record already provides more than sufficient evidence to warrant impeachment in the House and to commence an impeachment trial in the Senate tomorrow morning. Also, although a case for impeachment can be made concerning the Administration's other lies and actions, stretching out impeachment proceedings and investigations to cover other matters would merely strengthen the arguments that Congress does not have the time for impeachment, and that impeachment is impractical since the time it would take would almost amount to the time President Bush has left in office. However, the uranium case is strong and ready now.

Some might contend that impeachment in the House is impractical because Republicans in the Senate would never vote to convict and their votes would be needed to reach the two thirds total necessary for a conviction. However, as President Bush arrogantly escalates the war in Iraq and his name becomes the synonym for the war's misery and chaos, many Republican Senators if actually forced to make a decision between removing him from office or being labeled as his enabler in their own next election would vote to convict him rather than protect him.

Thus Congress should impeach President Bush and Vice President Cheney based on the articles of impeachment at the end of this report and on the grounds raised in this report. Also, citizens and state legislatures can file petitions incorporating said or similar articles of impeachment with Members of Congress and request said Members to file said matters.

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<sup>26</sup> See 28 U.S.C. §§ 593, 595(c) (1994). For impeachment trials in the Senate, the Senate has not adopted the criminal standard of proof beyond a reasonable doubt, nor adopted any other standard of proof. See *Trial of William Jefferson Clinton, President of the United States*, 145 CONG. REC. 5, S215, S218 (1999) (Reply of the United States House of Representatives to the Trial Memorandum of President William Jefferson Clinton).\* Concerning evidentiary rules, "[t]he Senate has not adopted standard rules of evidence to be used during an impeachment trial." HALSTEAD, *supra* note 16, at 5. See RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS, S. DOC. NO. 106-2, at 3-13 (1999), and Rule VII, at 5.\* Rule VII does not prohibit hearsay.

## II. THE URANIUM CLAIMS AND SURROUNDING CIRCUMSTANCES

### A. *Bush Justice Department's Refusal to Consider Charges*

The Justice Department has refused requests to investigate the Bush Administration's false and fraudulent claims to Congress that Iraq sought uranium for a nuclear weapon.

Congressman Maurice Hinchey and thirty-nine other Members of Congress in a letter dated September 15, 2005 to United States Attorney Patrick Fitzgerald asked him to expand his investigation concerning the leak of the name of an agent working for the Central Intelligence Agency (CIA) to include "the Administration's false and fraudulent claims in January 2003 that Iraq had sought uranium for a nuclear weapon."<sup>27</sup> In the first footnote they listed the five uranium claims that Administration officials made in January 2003 that are cited in this report and in the subsequent Articles Of Impeachment, including President Bush's claim in his 2003 State of the Union Address that the British government had learned that Iraq had recently sought uranium from Africa. 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."<sup>28</sup> They stated 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."<sup>29</sup>

On October 20, 2005, Congressman Jerrold Nadler in a letter to the Justice Department requested the Department to expand the framework of Fitzgerald's investigation and empower him to examine whether the leak itself was part of a broader conspiracy to mislead Congress

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<sup>27</sup> Letter from Congressman Maurice Hinchey to Patrick Fitzgerald (Sept. 15, 2005) para. 1 [hereinafter Hinchey Letter].\*

<sup>28</sup> *Id.* para. 2.

<sup>29</sup> *Id.* para. 10.

about the necessity of invading Iraq.<sup>30</sup> Congressman Nadler cited as an example President Bush's uranium claim in his January 2003 State of the Union Address.<sup>31</sup>

On October 28, 2005 Fitzgerald released a five-count indictment against I. Lewis Libby, which included two counts of making false statements to federal agents regarding the leak, in violation of 18 U.S.C. § 1001.<sup>32</sup> Libby was Vice President Cheney's Chief of Staff. Fitzgerald in the indictment actually mentioned Joseph Wilson's charge that President Bush made a false statement in his 2003 State of the Union Address when he stated that the British government had learned that Saddam Hussein recently sought uranium from Africa.<sup>33</sup> On March 6, 2007, the jury found Libby guilty on four of the five counts.<sup>34</sup>

The Justice Department, including Fitzgerald, has not investigated the charges made by Congressman Hinchey, Congressman Nadler, and Wilson. Fitzgerald is a United States Attorney and an employee of the Justice Department, and is not an outside Special Counsel that the Justice Department can appoint under its regulations 28 C.F.R. §§ 600.1, 600.3.<sup>35</sup> Fitzgerald after having obviously consulted with the main Justice Department told Congressman Hinchey in a letter dated March 7, 2006 that he would not investigate the matter.<sup>36</sup> Fitzgerald referred to earlier letters dated December 30, 2003 and February 6, 2004 from Deputy Attorney General James Comey granting him the authority to conduct his investigation. Fitzgerald then stated that his mandate from the Justice Department "was specifically defined by then Deputy Attorney General Comey, and does not ... include the authority to expand the investigation as you and

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<sup>30</sup> Letter from Congressman Jerrold Nadler to Acting Deputy Attorney General Robert D. McCallum, Jr. (Oct. 20, 2005) paras. 1-2.\* Congressman Nadler had also signed Congressman Hinchey's letter.

<sup>31</sup> *Id.* para. 4.

<sup>32</sup> Indictment, Counts Two-Three, at 15-17, *United States v. Libby*, Cr. No. 05-394 (D.D.C. Oct. 28, 2005).\*

<sup>33</sup> *Id.* at 3-6.

<sup>34</sup> Carol Leonnig & Amy Goldstein, *Libby Found Guilty in CIA Leak Case*, WASH. POST, Mar. 7, 2007, at

A1.\*

<sup>35</sup> 28 C.F.R. §§ 600.1, 600.3 (2006).

<sup>36</sup> Letter from Patrick J. Fitzgerald to The Honorable Maurice D. Hinchey (Mar. 7, 2006) [hereinafter Fitzgerald Letter].\*

your colleagues request.” Fitzgerald does not state that his mandate never allowed such an investigation but only that it now “does not” allow such an investigation.

Fitzgerald’s original mandate allowed such an investigation, as shown by Comey’s February 6 letter to Fitzgerald and by Comey’s statements at a December 30, 2003 press conference. The said February 6 letter from Comey actually informed Fitzgerald that he had “all the authority of the Attorney General” regarding the CIA leak case and that such authority was “*plenary* and includes the authority to investigate and prosecute violations of *any federal criminal laws related* to the underlying alleged unauthorized disclosure.”<sup>37</sup>

At a press conference on December 30, 2003 at which he announced Fitzgerald’s assignment, Comey stated that Attorney General John Ashcroft had recused himself and therefore he (Comey) as Deputy Attorney General became the acting Attorney General.<sup>38</sup> Comey announced that he had assigned Fitzgerald to the CIA leak case and gave him broad authority, and had actually told him that he could follow the facts wherever they lead and that he had all the approval authority of the Attorney General.<sup>39</sup>

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<sup>37</sup> Exhibit B Feb. 6, 2004 Letter from Deputy Attorney General James B. Comey to Patrick J. Fitzgerald, United States v. Libby, Cr. No. 05-394 (D.D.C. Mar. 17, 2006) (emphasis added) [hereinafter Comey Letter].\* Said exhibit was attached to the Government’s Response to Defendant’s Motion to Dismiss the Indictment, United States v. Libby, Cr. No. 05-394 (D.D.C. Mar. 17, 2006) [hereinafter Gov’t Response Re: Dismissal].\*

<sup>38</sup> Exhibit D Department of Justice Press Conference Deputy Attorney General James Comey Dec. 30, 2003, at 1-2, United States v. Libby, Cr. No. 05-394 (D.D.C. Mar. 17, 2006) [hereafter Comey Press Conf.].\* Said exhibit was attached to the Gov’t Response Re: Dismissal, *supra* note 37.

<sup>39</sup> Comey stated:

I have today delegated to Mr. Fitzgerald all the *approval authorities* that will be necessary to ensure that he has the tools to conduct a completely independent investigation; that is, that he has the *power and authority to make whatever prosecutive judgments he believes are appropriate, without having to come back to me or anyone else at the Justice Department for approvals*. Mr. Fitzgerald alone will decide how to staff this matter, *how to continue the investigation* and what prosecutive decisions to make.

Comey Press. Conf., *supra* note 38, at 2 (emphasis added).

Comey stated that he chose Fitzgerald who was the United States Attorney in Chicago rather than appointed an outside special counsel allowed under Justice Department regulations primarily because finding someone outside the Department would stall the investigation and also the authority that he was giving Fitzgerald was “*significantly broader*” than the authority that would be given to an outside special counsel. *Id.* at 2-3 (emphasis added). Comey stated:

However, when questioned by a reporter Comey stated: “I could revoke the delegation of authority that I’ve given to him.”<sup>40</sup> The statutes that allowed Comey to delegate such broad authority to Fitzgerald do not require that such delegation be in writing.<sup>41</sup> Thus Comey’s verbal delegation of authority was legitimate. Revocation of that authority can also be verbal.

The broad authority that Comey gave Fitzgerald to follow the facts certainly covers the Administration’s uranium claims since the facts in the leak case led Fitzgerald to the uranium claims, as Fitzgerald himself has noted in his own pleadings. Fitzgerald in Libby’s Indictment noted Wilson’s charge that President Bush’s claim in his State of the Union Address about Iraq seeking uranium from Africa was false.<sup>42</sup> Fitzgerald in a pleading filed April 5, 2006 stated that Wilson’s July 6, 2003 *New York Times* op-ed article (criticizing President Bush’s uranium claim) “was viewed in the Office of Vice President as a direct attack on the credibility of the Vice President (and the President) on a matter of signal importance: the rationale for the war in Iraq.”<sup>43</sup> Fitzgerald in a pleading filed May 12, 2006 stated that Wilson’s said article

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*An outside special counsel ... only gets the jurisdiction that is assigned to him and no other. The regulations provide that if he or she wants to expand that jurisdiction, they have to come back to the attorney general and get permission.*

[However] Fitzgerald has been *told*, as I said to you: *Follow the facts*; do the right thing. *He can pursue it wherever he wants to pursue it.*

.... Fitzgerald ... *does not have to come back to me for anything*. I mean, he can if he wants to, but I’ve *told* him, our instructions are: You have this authority; *I’ve delegated to you all the approval authority that I as attorney general have. You can exercise it as you see fit.*

....

So, in short, I have essentially given him – not essentially – *I have given him all the approval authorities that rest – that are inherent in the attorney general; something that does not happen with an outside special counsel.*

*Id.* at 9.

Comey also stated: “I *told* him that my *mandate to him was very simple: Follow the facts wherever they lead*, and do the right thing at all times.” *Id.* at 5 (emphasis added).

<sup>40</sup> *Id.* at 7.

<sup>41</sup> See 28 U.S.C. §§ 510, 515 (2000).

<sup>42</sup> Indictment, *supra* note 32, at 3-6.

<sup>43</sup> Government’s Response to Defendant’s Third Motion to Compel Discovery at 18, United States v. Libby, Cr. No. 05-394 (D.D.C. Apr. 5, 2006) (emphasis added) [hereinafter Gov’t Response Re: Discovery].\* That entry states April 6 although the filing was on April 5. Fitzgerald later amended the second sentence of the second paragraph on page 23 of that pleading to state: “Defendant understood that he was to tell Miller, among other things, some of the key judgments of the NIE, and that the NIE stated that Iraq was ‘vigorously trying to procure’ uranium.”

lies at the *center* of the sequence of events leading to the defendant's alleged criminal conduct. The article, and the fact that it contained certain *criticisms* of the administration, including criticisms regarding issues dealt with by the Office of the Vice President ("OVP"), serve both to explain the context of, and provide a motive for, many of the defendant's statements and actions at issue in this case.<sup>44</sup>

Fitzgerald attached Wilson's article to his pleading.<sup>45</sup> In that article entitled *What I Didn't Find in Africa* Wilson stated that the Administration "twisted [intelligence] to exaggerate the Iraqi threat."<sup>46</sup> In support of that charge, Wilson stated that he was a former ambassador and in 2002 (prior to the war in Iraq) at the CIA's request he went to Niger to investigate whether Niger had sold uranium to Iraq.<sup>47</sup> He concluded that "it was highly doubtful" that any such transaction had occurred and promptly briefed the CIA.<sup>48</sup> Wilson in his article referred to President Bush's claim in his January 2003 State of the Union Address that Iraq had tried to buy uranium from Africa.<sup>49</sup> Wilson stated that if the Administration ignored the information that he provided "because it did not fit certain preconceptions about Iraq, then a legitimate argument can be made that we went to war under *false pretenses*."<sup>50</sup> In addition to President Bush's claim that Iraq had tried to buy uranium from Africa, Wilson also noted Vice President Cheney's comment on "Meet the Press" that Hussein was "trying once again to produce nuclear weapons."<sup>51</sup> Wilson stated: "Congress, which authorized the use of military force at the president's behest, should want to know if the assertions about Iraq were warranted."<sup>52</sup>

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Government's Notice of Amendment at 1, *United States v. Libby*, Cr. No. 05-394 (D.D.C. Apr. 12, 2006),\* and appended Letter from Patrick J. Fitzgerald to Honorable Reggie B. Walton (Apr. 11, 2006).\*

<sup>44</sup> Government's Response to Court's Inquiry Regarding News Articles the Government Intends to Offer as Evidence at Trial at 2, *United States v. Libby*, Cr. No. 05-394 (D.D.C. May 12, 2006) (emphasis added).\*

<sup>45</sup> Exhibit A, Joseph C. Wilson 4th, Op-Ed., *What I Didn't Find in Africa*, N.Y. TIMES, July 6, 2003, *United States v. Libby*, Cr. No. 05-394 (D.D.C. May 12, 2006) (emphasis added).\*

<sup>46</sup> *Id.* para. 2.

<sup>47</sup> *Id.* paras. 3, 5, 7.

<sup>48</sup> *Id.* paras. 9, 12.

<sup>49</sup> *Id.* para. 15.

<sup>50</sup> *Id.* para. 18 (emphasis added).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

Thus Wilson basically accused the Administration of lying to Congress about Iraq seeking uranium. According to Fitzgerald, that charge “lies at the center” of events leading to Libby’s alleged crimes.

Fitzgerald knew that Wilson’s charge was a serious matter. In his above April 5 pleading Fitzgerald stated that the matter involved the rationale for war. During Libby’s trial Fitzgerald introduced transcripts of the testimony that Libby gave to a grand jury.<sup>53</sup> In a question to Libby before the grand jury Fitzgerald quoted Wilson’s claim in his article that he had “little choice but to conclude that some of the intelligence related to Iraq’s nuclear weapons program was twisted to exaggerate the Iraqi threat.”<sup>54</sup> Fitzgerald made the statement that Wilson’s article “was a direct accusation that the Vice President was *dishonest*, if you followed the inferences that Mr. Wilson made, that the President was *dishonest* and that the *country was misled into war*.”<sup>55</sup>

Thus Fitzgerald in the beginning had the plenary authority to investigate the uranium claims pursuant to Comey’s verbal mandate to follow the facts and his February 6 letter. That letter gave Fitzgerald the authority to investigate “any federal criminal laws related” to the leak,<sup>56</sup> and Wilson’s charge that the Administration lied to Congress about Iraq seeking uranium is “related” to the leak since it lies at the “center” of events leading to Libby’s alleged crimes. Also, Wilson’s charge was a serious matter since Fitzgerald after noting Wilson’s accusation that

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<sup>53</sup> Government Exhibit 1, Transcript of I. Lewis Libby (Mar. 5, 2004), United States v. Libby, Cr. No. 05-394 (D.D.C. Feb. 7, 2007) [hereinafter Libby Trans. #1];\* Government Exhibit 2, Transcript of I. Lewis Libby (Mar. 24, 2004), United States v. Libby, Cr. No. 05-394 (D.D.C. Feb. 7, 2007) [hereinafter Libby Trans. #2].\*

<sup>54</sup> Libby Trans. #1, *supra* note 53, at 77-78.

<sup>55</sup> *Id.* at 80 (emphasis added).

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

<sup>56</sup> Comey Letter, *supra* note 37.

the Administration had twisted intelligence described that accusation as inferring that President Bush and Vice President Cheney were “*dishonest* and that the *country was misled into war*.”<sup>57</sup>

Congressman Hinchey in his letter to Fitzgerald cited the federal criminal laws that such dishonesty would violate.<sup>58</sup> It took Fitzgerald six months to respond to Congressman Hinchey’s letter, which was a sufficient period of time for the main Justice Department to revoke part of Fitzgerald’s broad authority, and also to draft and or approve Fitzgerald’s response to that letter.<sup>59</sup> The Administration has tried to prevent at least one other investigation and has even fired federal prosecutors apparently because they investigated Republicans.<sup>60</sup>

Thus the Justice Department has refused to investigate charges that the Administration made false and fraudulent uranium claims.<sup>61</sup> Even if Comey never gave Fitzgerald jurisdiction broad enough to cover the uranium claims, the Justice Department has denied Congressman Nadler’s request for it to empower Fitzgerald to investigate the matter.

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<sup>57</sup> Libby Trans. #1, *supra* note 53, at 77-78, 80 (emphasis added).

<sup>58</sup> See *supra* p. 7.

<sup>59</sup> Obtaining all the communications between Fitzgerald and the main Justice Department concerning Congressman Hinchey’s letter would reveal whether the main Justice Department actually drafted Fitzgerald’s letter to Congressman Hinchey or required Fitzgerald to first submit it to the Department for approval prior to sending it. It is important to note that Fitzgerald in his letter to Congressman Hinchey used the past tense when he stated that his mandate “was specifically defined” by Comey and then used the present tense and stated that his mandate “does not” include the authority to investigate the uranium claims. Fitzgerald Letter, *supra* note 36.

<sup>60</sup> President Bush himself initially blocked Congressman Hinchey’s request that the Justice Department investigate the government’s warrantless surveillance program. See Dan Eggen, *Bush Thwarted Probe into NSA Wiretapping*, WASH. POST, July 19, 2006, at A4;\* Press Release, Congressman Maurice Hinchey, Hinchey to Bush: Reverse Decision to Block Justice Department Investigation of NSA Warrantless Surveillance Program (July 18, 2006).\* The Justice Department fired several United States Attorneys apparently because they investigated Republicans too aggressively or did not investigate Democrats, which has caused a House Judiciary subcommittee to issue subpoenas and for that committee and the Senate Judiciary Committee to hold hearings on the matter. Dan Eggen & Paul Kane, *Prosecutors Say They Felt Pressured, Threatened*, WASH. POST, Mar. 7, 2007, at A1.\*

<sup>61</sup> Furthermore, it should be noted that Fitzgerald in his letter to Congressman Hinchey further stated: “I do not plan to seek an expansion of my mandate in order to conduct the inquiry you have requested.” Fitzgerald Letter, *supra* note 36. It is not clear whether the Justice Department told Fitzgerald that it would deny such an expansion if he requested it. Also, since Fitzgerald is the United States Attorney in Chicago as a presidential appointee, he might not want the authority to investigate President Bush.

Also, it should be noted that even before Congressman Hinchey’s letter of September 15, 2005, Fitzgerald was not interested in investigating whether the uranium claims were false. Fitzgerald stated during his questioning of Libby before the grand jury that “the Grand Jury is not here to determine ... the truth or falsity of [Wilson’s] particular assertions.” Libby Trans. #1, *supra* note 53, at 80. Fitzgerald might have believed at the time that even if the uranium claims were false the claims could not have been crimes. However, Congressman Hinchey’s letter set forth how the claims were not only false and fraudulent but also crimes. Hinchey Letter, *supra* note 27.

## B. The Uranium Claims

President Bush and his most senior officials made five claims that Iraq had sought uranium for a nuclear weapon, all of which are mentioned in the report *Iraq on the Record*<sup>62</sup> and its *Database*<sup>63</sup> that the Minority Staff of the House Committee On Government Reform prepared. That report and *Database* list the five uranium claims among 237 statements about Iraq that President Bush, Vice President Cheney, the then National Security Advisor Condoleezza Rice, the then Secretary of State Colin Powell, and the then Secretary of Defense Donald Rumsfeld made. Concerning the uranium claims, that report and *Database* reveal:

(1) President Bush on January 20, 2003 in a communication to Congress stated that a report by Iraq to the UN (which was supposed to disclose all aspects of Iraq's programs to develop chemical, biological, and nuclear weapons) "failed to deal with issues which have arisen since 1998, including ... attempts to acquire uranium and the means to enrich it";<sup>64</sup>

(2) President Bush on January 28, 2003 in his State of the Union Address stated that the "British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa";<sup>65</sup>

(3) the then National Security Advisor and now Secretary of State Rice on January 23, 2003 in an op-ed article in *The New York Times* entitled *Why We Know Iraq Is Lying* stated that Iraq's declaration to the UN (which was supposed to disclose all aspects of Iraq's programs to

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<sup>62</sup> HOUSE GOV'T REFORM COMM. MIN. REPORT: IRAQ, *supra* note 1.

<sup>63</sup> HOUSE COMMITTEE ON GOVERNMENT REFORM MINORITY STAFF, 108TH CONG., IRAQ ON THE RECORD DATABASE (2004).<sup>\*</sup> To retrieve from that database all the uranium statements of which there are fifteen including the five statements about Iraq seeking uranium, go to the database and in the left column at Speaker enter All, at Keyword enter uranium, and at Subject enter Nuclear Capabilities, and choose Find Statements then choose Show All. That portion of the database containing the uranium claims is hereinafter referred to as the HOUSE GOV'T REFORM COMM. MIN. REPORT: URANIUM DATABASE.

<sup>64</sup> HOUSE GOV'T REFORM COMM. MIN. REPORT: URANIUM DATABASE, *supra* note 63, at 5.

<sup>65</sup> HOUSE GOV'T REFORM COMM. MIN. REPORT: IRAQ, *supra* note 1, at 13; HOUSE GOV'T REFORM COMM. MIN. REPORT: URANIUM DATABASE, *supra* note 63, at 3.

develop chemical, biological, and nuclear weapons) “fails to account for or explain Iraq’s efforts to get uranium from abroad”;<sup>66</sup>

(4) the then Secretary of State Powell on January 26, 2003 in a speech at the World Economic Forum stated: “Why is Iraq still trying to procure uranium and the special equipment needed to transform it into material for nuclear weapons?”;<sup>67</sup> and

(5) the then Secretary of Defense Rumsfeld on January 29, 2003 at a press conference stated that Hussein’s “regime has the design for a nuclear weapon, was working on several different methods of enriching uranium, and recently was discovered seeking significant quantities of uranium from Africa.”<sup>68</sup>

President Bush’s above two uranium claims are in Congressional documents. President Bush’s 2003 State of the Union Address that he gave to Congress is entitled *Message from the President of the United States Transmitting a Report on the State of the Union* and is labeled “House Document 108-1”.<sup>69</sup> The report *Iraq on the Record* quotes the sentence concerning uranium in President Bush’s Address but the prior sentence is also important since it mentions the purpose for the uranium. As shown by the document, President Bush told Congress:

The [UN’s] International Atomic Energy Agency [IAEA] confirmed in the 1990’s that Saddam Hussein had an advanced nuclear weapons development program, had a design for a nuclear weapon, and was working on five different methods of enriching uranium for a bomb. The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.<sup>70</sup>

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<sup>66</sup> HOUSE GOV’T REFORM COMM. MIN. REPORT: IRAQ, *supra* note 1, at 13; HOUSE GOV’T REFORM COMM. MIN. REPORT: URANIUM DATABASE, *supra* note 63, at 4.

<sup>67</sup> HOUSE GOV’T REFORM COMM. MIN. REPORT: URANIUM DATABASE, *supra* note 63, at 4.

<sup>68</sup> HOUSE GOV’T REFORM COMM. MIN. REPORT: IRAQ, *supra* note 1, at 13; HOUSE GOV’T REFORM COMM. MIN. REPORT: URANIUM DATABASE, *supra* note 63, at 2.

<sup>69</sup> GEORGE W. BUSH, MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING A REPORT ON THE STATE OF THE UNION, H.R. DOC. NO. 108-1 (2003) [hereinafter HOUSE DOC. NO. 108-1].\*

<sup>70</sup> *Id.* at 8.

President Bush not only stated that Hussein recently sought the uranium but later in his Address stated that Hussein could “provide one of his hidden weapons to terrorists”, and further stated: “Imagine those 19 hijackers with other weapons, and other plans - this time armed by Saddam Hussein.”<sup>71</sup>

The statement that President Bush made to Congress about Iraq’s report to the UN was in a report President Bush submitted 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*, and that report is labeled “House Document 108-23”.<sup>72</sup> President Bush in his report referred to UN Security Council Resolution 1441 (S.C. Res. 1441) that required Iraq to make a complete and accurate declaration of all aspects of its programs to develop chemical, biological and nuclear weapons, and he stated that Iraq’s response (its December 7, 2002 declaration to the UN) was incomplete, inaccurate, and false in part because Iraq in its report “failed to deal with issues which have arisen since 1998, including ... attempts to acquire uranium and the means to enrich it.”<sup>73</sup> President Bush also stated: “[W]e have not seen anything that indicates that the Iraqi regime has made a strategic decision to disarm. On the contrary, we believe that Iraq is actively working to disrupt, deny, and defeat [UN] inspection efforts.”<sup>74</sup> The war resolution that Congress passed earlier in October 2002 authorizing President Bush to use military force in Iraq required him to submit the above report to Congress.<sup>75</sup>

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<sup>71</sup> *Id.* at 9.

<sup>72</sup> GEORGE W. BUSH, COMMUNICATION FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING A REPORT ON MATTERS RELEVANT TO THE AUTHORIZATION FOR USE OF MILITARY FORCE AGAINST IRAQ RESOLUTION OF 2002, PUBLIC LAW 107-243, H.R. DOC. NO. 108-23 (2003) [hereinafter HOUSE DOC. NO. 108-23].\*

<sup>73</sup> *Id.* at 4-5.

<sup>74</sup> *Id.* at 5.

<sup>75</sup> Iraq War Res. of 2002, *supra* note 4, Pub. L. No. 107-243, § 4(a), 116 Stat. 1501.

Also the above-mentioned *New York Times* op-ed article of National Security Advisor Rice, the speech of Secretary Powell to the World Economic Forum, and a transcript of Secretary's Rumsfeld's above-mentioned press conference are available on the Internet.<sup>76</sup>

Furthermore the report *Iraq on the Record* and the accompanying *Database* only contain the statements of President Bush, Vice President Cheney, National Security Advisor Rice, Secretary of State Powell, and Secretary of Defense Rumsfeld but the White House and other Administration officials made additional uranium claims.<sup>77</sup>

Regarding Vice President Cheney's involvement in the uranium claims, Fitzgerald in his court pleading filed April 5, 2006 stated that according to Libby's previous grand jury testimony, Vice President Cheney on or about July 8, 2003 communicated to Libby, who was his Chief of Staff, that he thought it was "very important" that the key judgments of the October 2002 National Intelligence Estimate (NIE) come out to rebut Wilson's criticism, and Libby understood that to mean that he was to tell the press that the NIE stated that Iraq was "vigorously trying to procure" uranium.<sup>78</sup>

The transcripts that Fitzgerald introduced at Libby's trial reveal that Libby testified that in the week of July 7, 2003 following Wilson's article, Vice President Cheney thought that it was important to rebut Wilson's article and to support the uranium claim that President Bush had

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<sup>76</sup> See *Kondracke falsely asserted Niger claim "was never one of the major arguments" for war, Wilson's report "was never accepted by anybody"*, MEDIA MATTERS FOR AMERICA, Oct. 19, 2005, para. 8 [hereinafter MEDIA MATTERS].\*

<sup>77</sup> The Deputy Secretary of Defense Paul Wolfowitz on January 23, 2003 in a speech to the Council on Foreign Relations stated that Iraq's December 7 declaration to the UN contained "no mention of Iraqi efforts to procure uranium from abroad." See *Id.* para. 8 (link to Jan. 23, 2003 speech by Deputy Defense Secretary Wolfowitz, para. 22). The White House on January 23, 2003 issued a report entitled *What Does Disarmament Look Like?*, which stated that Iraq's declaration failed to disclose "efforts to procure uranium from abroad." See MEDIA MATTERS, *supra* note 76, para. 7 (link to Jan. 23, 2003 report "What Does Disarmament Look Like?", at 4). The then Deputy National Security Advisor Stephen Hadley in a February 16, 2003 op-ed article in the *Chicago Tribune* stated: "According to British intelligence, the [Hussein] regime has tried to acquire natural uranium from abroad." See MEDIA MATTERS, *supra* para. 8 (link to Feb. 16, 2003 CHI. TRIB. op-ed. article by Deputy National Security Advisor Hadley, para. 11).

<sup>78</sup> Gov't Response Re: Discovery, *supra* note 43, at 18, 21, 23 (as amended).

made in his State of the Union Address, and accordingly Vice President Cheney on July 7, 2003 instructed Libby to reveal to the press the sections of the NIE, and another document dated January 24, 2003, which contained the statement that Iraq vigorously tried to procure uranium.<sup>79</sup>

Libby testified that Vice President Cheney stated that “anything less than full and complete disclosure is a serious mistake” and Libby further testified that Vice President Cheney was “pushing it” and wanted to “tell it all, get all these documents out to the public.”<sup>80</sup>

Libby admitted that he had reviewed the NIE in 2002 or 2003 and knew that “there are some sections towards the back [of it] in which [the] State Department expresses some doubts about [the] uranium [claim].”<sup>81</sup>

Libby testified that on July 12, 2003, Vice President Cheney dictated to Libby certain things that he wanted Libby to tell the press,<sup>82</sup> and additionally on deep background he wanted Libby to make “it very clear that it was the NIE six months after Wilson’s trip where the CIA

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Libby testified:

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

Libby Trans. # 1, *supra* note 53, at 116 (emphasis added).

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

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

So both in October of 2002, and in January 24, three days before the State of the Union, the CIA in writing sent to the White House this consensus language which said Iraq had tried to buy uranium from Niger, the exact point that the President was making in the State of the Union. That’s what the Vice President had seen.... And it was pretty definite against what Ambassador Wilson was saying.. So we thought it was important that Judy Miller [who was a reporter], or somebody, report this... [T]he Vice President instructed me to go talk to Judy Miller, to lay this out for her.

*Id.* at 116-117.

Libby later testified that the date of this discussion was July 7, 2003. Libby Trans. #2, *supra* note 53, at 33.

<sup>80</sup> Libby Trans. # 1, *supra* note 53, at 142.

<sup>81</sup> *Id.* at 19.

<sup>82</sup> *Id.* at 173, 177-181.

and the intelligence community was saying affirmatively that they [Iraq] had tried to procure uranium.”<sup>83</sup> It certainly appears that Vice President Cheney did not direct Libby to disclose nor did Libby disclose the section of the NIE where the State Department expressed doubts about the uranium claim.

According to Fitzgerald’s pleading, Libby at first told Vice President Cheney that he could not make such a disclosure to the press because the NIE was classified but Vice President Cheney later told Libby that President Bush had authorized Libby to disclose the relevant portions of the NIE.<sup>84</sup> Libby conferred with David Addington, the Counsel for Vice President Cheney, who told him that Presidential authorization to publicly disclose a classified document amounted to declassification of that document.<sup>85</sup>

The transcripts reveal that Libby testified that at first he told Vice President Cheney there was a problem in talking to the press about the NIE because it was a classified document but Vice President Cheney told him that “he would talk to the President and get the President’s approval for us to use the document.”<sup>86</sup> Libby testified that Addington told him that President Bush had the power to declassify a document and he provided Libby with the name of a case to support that view.<sup>87</sup> Libby testified that the “President came back to the Vice President and said, yes, it would be okay, or I should go talk to somebody.”<sup>88</sup> Libby further testified that Vice President Cheney “told me he had talked to the President and we should go ahead and, you know, talk to the press about the NIE.”<sup>89</sup>

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<sup>83</sup> *Id.* at 181, 182. Under ‘deep background’, the reporter does not reveal the identity of the source. *Id.* at 13.

<sup>84</sup> Gov’t Response Re: Discovery, *supra* note 43, at 19-20, 23.

<sup>85</sup> *Id.* at 23.

<sup>86</sup> Libby Trans. # 1, *supra* note 53, at 117.

<sup>87</sup> *Id.* at 118.

<sup>88</sup> *Id.*

<sup>89</sup> Libby Trans. #2, *supra* note 53, at 49.

President Bush has admitted that he declassified the NIE and did so because he “wanted people to see the truth” and “to get a better sense for why I was saying what I was saying in my speeches.” Press Release, The White

According to Fitzgerald’s pleading, Libby on July 8, 2003 met with a reporter, Judith Miller, and he thought that he brought with him a brief abstract of the NIE’s key judgments, and he discussed the NIE with her.<sup>90</sup> Libby told Miller that she was to identify him in any article not by name but as a “former Hill staffer.”<sup>91</sup>

According to the transcripts, Libby testified that on July 8, 2003 he showed Miller a redacted copy of the NIE that he created and he affirmed in response to questions that he told her that the NIE stated that Iraq was vigorously trying to procure uranium.<sup>92</sup> In response to a question Libby affirmed that he did not show Miller the relevant portions of the whole NIE but only his redacted version.<sup>93</sup>

Furthermore Libby testified that in response to Vice President Cheney’s direction of July 12, 2003 to tell the press that the NIE stated that Iraq had sought uranium Libby subsequently had conversations with various reporters including Matthew Cooper, Evan Thomas, Glen Kessler, and again with Miller.<sup>94</sup>

Also in his pleading of April 5, 2006 Fitzgerald not only stated that the Vice President’s Office viewed Wilson’s op-ed article as a direct attack on the Vice President’s credibility, but Fitzgerald further stated that Libby “undertook vigorous efforts to rebut this attack during the week following” Wilson’s op-ed article.<sup>95</sup> Fitzgerald opined that some of the documents that he had given to Libby’s lawyers “could be characterized as reflecting a plan to discredit, punish, or seek revenge against Mr. Wilson” because of his critical op-ed article.<sup>96</sup>

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House, President Bush Discusses Global War on Terror, at 7-8 (Apr. 10, 2006).\*

<sup>90</sup> Gov’t Response Re: Discovery, *supra* note 43, at 23-24.

<sup>91</sup> *Id.* at 23.

<sup>92</sup> Libby Trans. #1, *supra* note 53, at 114, 124; Libby Trans. #2, *supra* note 53, at 30, 33-35, 56, 64-65.

<sup>93</sup> Libby Trans. #2, *supra* note 53, at 35.

<sup>94</sup> Libby Trans. #1, *supra* note 53, at 173, 177-193.

<sup>95</sup> Gov’t Response Re: Discovery, *supra* note 43, at 18 (emphasis added).

<sup>96</sup> *Id.* at 7.

Thus although Vice President Cheney was not one of the Bush Administration officials who had made public statements that Iraq had sought uranium for a nuclear weapon, he directed his Chief of Staff Libby to engage in acts to support President Bush's uranium claim while at the same time there was a plan to discredit and punish a critic of that claim. Also, Vice President Cheney was obviously involved in spreading the uranium story as a rationale for the war in January 2003 because his office believed that Wilson was attacking the Vice President's own credibility on that very matter.

As revealed later, Vice President Cheney was interested in the uranium issue from the beginning, which apparently led to the CIA sending Wilson to Niger to investigate the claim.<sup>97</sup> Also, according to a document of Craig Schmall that Libby's lawyers introduced at his trial, Schmall told federal agents that "*Libby was in charge* within the administration (or at least the White House side) for *producing papers arguing the case for Iraqi WMD* and ties between Iraq and al-Qaida, which explains Libby's and the Vice President's interest in the Iraq/Niger/Uranium case."<sup>98</sup> Schmall was the CIA briefer for Libby and Vice President Cheney.<sup>99</sup>

### *C. Significance of the Administration's Uranium and Nuclear Claims*

The report *Iraq on the Record* states: "Another significant component of the Administration's nuclear claims was the assertion that Iraq had sought to import uranium from Africa. As one of few *new pieces of intelligence*, this claim was *repeated multiple times by Administration officials as proof that Iraq had reconstituted its nuclear weapons program.*"<sup>100</sup>

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<sup>97</sup> See *infra* pp. 23-24.

<sup>98</sup> Defense Exhibit 421, Message by Craig Schmall to CIA Employees (Jan. 9, 2004) 2, United States v. Libby, Cr. No. 05-394 (D.D.C. Jan. 24, 2007) (emphasis added).\*

Also, a review of all the testimony introduced at Libby's trial and a more thorough review of all the exhibits might reveal even more information regarding Vice President Cheney's involvement in the uranium claims.

<sup>99</sup> *Id.*; Libby Trans. #1, *supra* note 53, at 27.

<sup>100</sup> HOUSE GOV'T REFORM COMM. MIN. REPORT: IRAQ, *supra* note 1, at 13 (emphasis added).

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

*For precisely this reason, the Administration’s statements about Iraq’s nuclear capabilities had a large impact on congressional and public perceptions about the threat posed by Iraq.* Many members of Congress were more influenced by the Administration’s nuclear assertions than by any other piece of evidence.... Numerous members of Congress stressed Iraq’s nuclear threat in their floor statements explaining their support of the [war] resolution.<sup>101</sup>

The House Judiciary Committee Democratic Staff issued a report/book entitled *George W. Bush versus the U.S. Constitution* that mentions the above five uranium claims that the Bush Administration made in January 2003 and which further states that according to a press report the White House believed that “[e]very layman understood the connection between uranium and the bomb.”<sup>102</sup> According to that press report the uranium claim “was the easiest way for the Bush administration to raise alarms.”<sup>103</sup> According to another press report, “[f]or a speech writer, uranium was valuable because anyone could [s]ee its connection to an atomic bomb.”<sup>104</sup>

#### *D. Whole Truth Which Showed the Uranium Claims to Be False and Fraudulent*

The full Senate Select Committee on Intelligence released on July 9, 2004 an investigative report entitled *Report of the Select Committee on Intelligence on the U.S. Intelligence Community’s Prewar Intelligence Assessments on Iraq* (Senate Report).<sup>105</sup> The Senate Report cites President Bush’s above two uranium statements and Secretary Powell’s

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<sup>101</sup> *Id.* at 7-8 (emphasis added).

<sup>102</sup> HOUSE JUDICIARY COMMITTEE DEMOCRATIC STAFF, 109TH CONG., *GEORGE W. BUSH VERSUS THE U.S. CONSTITUTION* 73, 29 (Anita Miller ed., Academy Chicago Publishers 2006) (2006) [hereinafter HOUSE JUD. COMM. MIN. REPORT: BUSH V. CONST.].

<sup>103</sup> *Id.* at 29.

<sup>104</sup> *Id.* at 31 (emphasis in original).

<sup>105</sup> SENATE SELECT COMMITTEE ON INTELLIGENCE, *REPORT OF THE SELECT COMMITTEE ON INTELLIGENCE ON THE U.S. INTELLIGENCE COMMUNITY’S PREWAR INTELLIGENCE ASSESSMENTS ON IRAQ*, S. REP. NO. 108-301 (2004) [hereinafter SENATE INTEL. COMM. REPORT: IRAQ].\* In the above text that report is referred to as the Senate Report.

uranium statement,<sup>106</sup> and reveals many things including significant matters that President Bush and his senior officials did not disclose.

According to the Senate Report, on February 12, 2002 the Defense Intelligence Agency (DIA) issued a report, based on an earlier CIA report, which stated that Iraq probably was searching abroad for natural uranium to assist in its nuclear weapons program.<sup>107</sup> That DIA report did not include any judgments about the credibility of the reporting.<sup>108</sup>

Vice President Cheney read that DIA report and asked his morning briefer for the CIA's analysis of the issue.<sup>109</sup> The CIA issued a report stating that the earlier report lacked crucial details, some of the information in the report contradicted reporting by the American embassy in Niger, and that the CIA was trying to determine if the information could be corroborated.<sup>110</sup> The CIA sent a copy of that report to Vice President Cheney.<sup>111</sup>

On February 20, 2002, the CIA asked a former ambassador to go to Niger to investigate.<sup>112</sup> Although the Senate Report does not name the ambassador, it obviously was referring to Wilson. The ambassador went to Niger on February 26, 2002 and interviewed former government officials, and he told the Senate Committee's staff that he told United States officials while in Niger that there was "nothing to the story."<sup>113</sup>

In early March 2002, Vice President Cheney asked his morning briefer for an update on the Niger uranium issue and CIA analysts then sent an update to the briefer that stated that the foreign government service that provided the original report was unable to provide new

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<sup>106</sup> *Id.* at 63-64, 66.

<sup>107</sup> *Id.* at 38.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 38-39.

<sup>111</sup> *Id.* at 39.

<sup>112</sup> *Id.* at 40-41.

<sup>113</sup> *Id.* at 42.

information, but continued to assess that its report was reliable.<sup>114</sup> That update also mentioned that the CIA would on March 5 be debriefing a source who may have information related to the alleged sale.<sup>115</sup>

On March 5, 2002 two CIA officers from the Directorate of Operations debriefed the ambassador and they wrote a draft intelligence report that was disseminated on March 8, 2002.<sup>116</sup>

The CIA analysts did not believe the report supplied much new information or that it clarified the story on the alleged Iraq-Niger uranium deal and therefore did not use the report to produce any further analytical products or highlight the report for policy makers.<sup>117</sup> Therefore the CIA's briefer of Vice President Cheney did not brief the Vice President on the report.<sup>118</sup> The Senate Report is silent as to whether Vice President Cheney ever read the original report or knew about it from sources other than the individual CIA officer who formally briefs him.

The Senate Report states that the CIA actually cleared two proposed presidential speeches that the White House's National Security Council (NSC) had sent to the CIA in September 2002 that contained the claims that Iraq was caught trying to purchase 500 tons of uranium and that Iraq had sought large amounts of uranium from Africa.<sup>119</sup> President Bush did not use the approved language publicly.<sup>120</sup>

The Senate Report states that the British government on September 24, 2002 published a White Paper that stated "there is intelligence that Iraq has sought the supply of significant

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<sup>114</sup> *Id.* at 43.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 46.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 49, 51.

<sup>120</sup> *Id.* at 49, 51.

quantities of uranium from Africa.”<sup>121</sup> That White Paper known as a dossier was entitled *Iraq’s Weapons of Mass Destruction*, and it did not state that Iraq’s seeking of uranium was *recent*.<sup>122</sup>

Furthermore in a statement that the CIA released the following year on July 11, 2003, CIA Director George Tenet stated that prior to the release of the British dossier (White Paper), the CIA had warned the British government about making the uranium claim in its dossier.<sup>123</sup> Tenet stated that in the fall of 2002 the British government told the CIA that it was planning to mention in a dossier reports about Iraqi attempts to obtain uranium in Africa.<sup>124</sup> Tenet stated: “Because we viewed the reporting on such acquisition attempts to be inconclusive, we expressed reservations about its inclusion but our [British] colleagues said they were confident in their reports and left it in their document.”<sup>125</sup> Tenet further stated: “In September and October 2002 before Senate Committees, senior intelligence officials in response to questions told members of Congress that we differed with the British dossier on the *reliability* of the uranium reporting.”<sup>126</sup> (Tenet’s reference about telling things to Senate Committees would be to certain committees whose members cannot divulge the secret information to all other Members of Congress.)

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<sup>121</sup> *Id.* at 50.

<sup>122</sup> The British White Paper, which was released to the public, stated: “As a result of the intelligence we *judge* that Iraq has ... sought significant quantities of uranium from Africa, despite having no active civil nuclear power programme that could require it ...” JOINT INTELLIGENCE COMMITTEE, *IRAQ’S WEAPONS OF MASS DESTRUCTION, THE ASSESSMENT OF THE BRITISH GOVERNMENT* 5-6 (2002) (emphasis added).<sup>\*</sup> That judgment was based on the above-mentioned statement that “there is intelligence that Iraq has sought the supply of significant quantities of uranium from Africa.” *Id.* at 25. The British White Paper also stated: “Uranium has been sought from Africa that has no civil nuclear application in Iraq ...” *Id.* at 17. In his statement to Parliament concerning the report, Prime Minister Tony Blair stated: “In addition, we know Saddam has been trying to buy significant quantities of uranium from Africa, though we do not know whether he has been successful.” Prime Minister Tony Blair, Prime Minister’s Iraq Statement to Parliament, para. 20 (Sept. 24, 2002).<sup>\*</sup> Thus the British White Paper (dossier) did not state that Iraq *recently* sought uranium from Africa, nor did Blair. A later British report stated that the uranium claims in the above dossier and by extension President Bush’s uranium claim in his State of the Union Address were well founded. THE LORD BUTLER, *REVIEW OF INTELLIGENCE ON WEAPONS OF MASS DESTRUCTION* 121-125 (2004).<sup>\*</sup>

<sup>123</sup> George J. Tenet, Statement by George J. Tenet, Director of Central Intelligence, para. 6 (July 11, 2003).<sup>\*</sup>

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* para. 7 (emphasis added).

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

The Senate Report reveals that a CIA analyst in September 2002 suggested to a staff member of the White House's NSC that references in a proposed speech about Iraqi attempts to acquire uranium from Africa be removed.<sup>127</sup>

The Senate Report states that on October 1, 2002 the National Intelligence Council (NIC) published the above mentioned classified National Intelligence Estimate (NIE), which was entitled *Iraq's Continuing Programs for Weapons of Mass Destruction*.<sup>128</sup> The NIE stated that Iraq had about 550 tons of uranium in country that the IAEA inspected annually but that Iraq "also began vigorously trying to procure uranium ore and yellowcake; acquiring either would shorten the time Baghdad needs to produce nuclear weapons."<sup>129</sup> As an apparent source for that view, the NIE mentioned that a foreign government service had reported that as of early 2001 Niger planned to send several tons of pure uranium (yellowcake) to Iraq but in 2001 the countries were still working out arrangements for the deal, which could have been for up to 500 tons of yellowcake.<sup>130</sup> The NIE also mentioned reports that indicated that Iraq also sought uranium from Somalia and possibly the Democratic Republic of the Congo.<sup>131</sup> The NIE further stated: "We cannot confirm whether Iraq succeeded in acquiring uranium ore and/or yellowcake from these sources."<sup>132</sup>

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<sup>127</sup> SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 51.

<sup>128</sup> *Id.* at 51-54.

<sup>129</sup> *Id.* at 52, 54.

<sup>130</sup> *Id.* at 52.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

Concerning the above claims about Iraq seeking uranium, the NIE contained the dissenting opinion of the State Department's Bureau of Intelligence and Research (INR) that the "claims of Iraqi pursuit of natural uranium in Africa are ... highly dubious."<sup>133</sup>

The Senate Report states that on October 4, 2002 the White House's NSC sent to the CIA a draft of a speech that President Bush was to give in Cincinnati that contained the statement that Iraq had been caught attempting to purchase up to 500 tons of uranium from Africa.<sup>134</sup> Due to the concerns expressed by a CIA Iraq nuclear analyst, the CIA's Associate Deputy Director for Intelligence on October 5, 2002 faxed a memo to the NSC's Deputy National Security Advisor (Stephen Hadley) and to the speechwriters suggesting that they remove the uranium claim from the speech because the amount was in dispute, the claim was debatable, the CIA had told Congress that the British had exaggerated the issue, and Iraq already had 550 tons of uranium in its inventory.<sup>135</sup>

The NSC then sent to the CIA another draft of the speech containing a revised statement that Iraq had been caught attempting to purchase substantial amounts of uranium from Africa.<sup>136</sup> On October 6, 2002 the CIA's Associate Deputy Director believed that the NSC had not addressed the uranium information in its later draft and alerted the CIA Director (Tenet).<sup>137</sup> The CIA Director responded by telling the Deputy National Security Advisor (Hadley) that President Bush should not provide any facts on the issue in the speech because CIA analysts told him that the "reporting [on the uranium claim] was weak."<sup>138</sup> After the White House's NSC removed the claim from the speech, the CIA on October 6, 2002 sent a second fax to the White House which

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<sup>133</sup> *Id.* at 53-54.

<sup>134</sup> *Id.* at 55.

<sup>135</sup> *Id.* at 55-56.

<sup>136</sup> *Id.* at 56.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

stated: “[M]ore on why we recommend removing the sentence about procuring uranium oxide from Africa: .... The evidence is weak .... [, and] we have shared [that view] ... with Congress, telling them that the Africa story is overblown and ... we differed with the British.”<sup>139</sup> On October 7, 2002, President Bush delivered his speech in Cincinnati and did not make the uranium claim.<sup>140</sup>

The Senate Report reveals that on or about October 11, 2002 the CIA received copies of documents concerning a purported uranium deal between Iraq and Niger.<sup>141</sup> The Iraq nuclear analyst at the State Department’s INR received a fax of the documents on or about October 15, 2002 and sent an e-mail to Intelligence Community (IC) colleagues in which he stated that one of the documents had “a funky Emb. of Niger stamp (to make it look official, I guess).”<sup>142</sup>

The Senate Report states that in response to Iraq’s declaration to the UN of December 7, 2002, the State Department on December 19, 2002 published a fact sheet on its web page that stated that Iraq’s declaration “ignores efforts to procure uranium from Niger.”<sup>143</sup> In response the Nigerian Prime Minister on December 24, 2002 declared publicly that Niger had not sold uranium to Iraq and had not been approached since he took office in 2000.<sup>144</sup> On January 6, 2003, the UN’s IAEA requested information on the alleged Iraq-Niger uranium deal mentioned in the State Department’s fact sheet.<sup>145</sup>

The Senate Report reveals that on January 13, 2003 (which was one week before President Bush and his said senior officials made their first uranium claim), the Iraq nuclear analyst for the State Department’s INR sent another e-mail to several Intelligence Community

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<sup>139</sup> *Id.* at 56-57.

<sup>140</sup> *Id.* at 57.

<sup>141</sup> *Id.* at 58.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 60-61.

<sup>144</sup> *Id.* at 61.

<sup>145</sup> *Id.* at 62.

(IC) analysts, including at the CIA, outlining the reasons why he believed that the document supposedly supporting the Iraq-Niger uranium deal “probably is a hoax” and “probably is a forgery.”<sup>146</sup>

After the State Department’s INR alerted the CIA and Defense Intelligence Agency about the problems with the documents, said agencies published assessments that, as summarized in the Senate Report, stated that “Iraq *may* have been seeking uranium from Africa.”<sup>147</sup>

Concerning the State of the Union Address of January 28, 2003, the Senate Report reveals that a NSC official at the White House and a CIA official discussed the draft of that speech that the White House had sent to the CIA that stated “*we know* that [Hussein] has recently sought to buy uranium in Africa.”<sup>148</sup> The final draft that President Bush actually used stated that the “*British government has learned* that Saddam Hussein recently sought significant quantities of uranium from Africa.”<sup>149</sup> Both officials stated that the CIA official did not express any concerns about the credibility of the uranium reporting, and there was never a discussion on the credibility of the information.<sup>150</sup> The stated reason for the switch from ‘we’ to the British was the desire to identify in the speech a source for the uranium claim that was not classified, and the British White Paper source was not classified while the American source was classified.<sup>151</sup>

However, the original draft of the Address that the White House sent apparently did not name any source for America’s knowledge but merely said ‘we’. There was really no need to further identify any sources. Concerning other claims against Hussein, President Bush in his Address actually used the phrase ‘intelligence sources’ without providing any specifics on the

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<sup>146</sup>

*Id.*

<sup>147</sup> *Id.* at 77, 62, 64 (emphasis added).

<sup>148</sup> *Id.* at 64-65 (emphasis added). The CIA official was from the CIA’s WINPAC (Center for Weapons Intelligence, Nonproliferation and Arms Control). *Id.* at 64-65, 440.

<sup>149</sup> *Id.* at 66 (emphasis added).

<sup>150</sup> *Id.* at 65-66.

<sup>151</sup> *Id.*

sources.<sup>152</sup> Thus perhaps the reason for the switch from “we know” to the “British government has learned” was that the CIA was not really comfortable with the “we know” especially since that might include the CIA Director who had previously told the White House that the President should not make any uranium claim because CIA analysts believed it was weak.

It is interesting to note that the Senate Report states that the CIA official who reviewed the State of the Union Address with the NSC official did not express any concerns about the credibility of the reporting on the uranium claim, but the Senate Report fails to mention that in a statement released one year prior to the Senate Report, CIA Director Tenet admitted that the CIA had raised several concerns with the NSC about the fragmentary nature of the intelligence on the uranium claim in the Address.<sup>153</sup> The Senate Report does mention that the CIA Director (Tenet) testified that on January 27, 2003 (the day before the State of the Union Address) he was provided with a hardcopy of the State of the Union Address while at an NSC meeting but never read it.<sup>154</sup> The Senate Report is silent on whether anyone asked Tenet whether he had any discussions that day with anyone about the speech or the uranium claim in it, and whether he raised the same concerns about the uranium claim in that speech as he did concerning the Cincinnati speech.

The Senate Report states that according to the National Intelligence Officer (NIO), the NSC on January 24, 2003 “believed the nuclear case [against Iraq] was weak” and requested additional information from the American Intelligence Community (IC).<sup>155</sup> The NIO then provided the NSC with sections of the earlier October 2002 NIE, which included the NIE text that Iraq began ‘vigorously trying to procure uranium ore and yellowcake,’ which outlined

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<sup>152</sup> HOUSE DOC. NO. 108-1, *supra* note 69, at 9.

<sup>153</sup> *See infra* pp. 33-34.

<sup>154</sup> SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 64.

<sup>155</sup> *Id.* at 240.

possible uranium acquisition attempts in Niger, Somalia, and possibly the Congo, and which included the NIE text that the Intelligence Community did not know the status of the Niger arrangement.<sup>156</sup> However, the NSC members would have had the NIE report for months and would have already read it.

The above report of January 24, 2003 from the NIO to the NSC that mentioned the previous October 2002 NIE certainly appears to be the January 24 report that Libby mentioned in his grand jury testimony.<sup>157</sup> Thus the report that Libby mentioned was not a new and independent report that buttressed the uranium claim but merely was a repetition of the prior NIE, that had also contained the State Department's view that the uranium claim was highly dubious.<sup>158</sup>

According to the White House website, President Bush chairs the NSC as President, and the regular attendees at NSC meetings include the Vice President, the Secretary of State, the Secretary of Defense, and the Assistant to the President for National Security Affairs (National Security Advisor).<sup>159</sup> Thus the very people who claimed in January 2003 that Iraq had sought uranium were the key members of a council that believed in January 2003 that the nuclear case against Iraq was weak.

The Senate Report also reveals that after President Bush made his uranium claim in his State of the Union Address on January 28, 2003, the American government a few days later on February 4, 2003 informed the UN's IAEA that it "cannot confirm [the uranium] reports."<sup>160</sup> On

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<sup>156</sup>

*Id.*

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*See supra* p. 18, including note 79.

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*See* SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 52-54.

<sup>159</sup>

National Security Council, The White House.\*

<sup>160</sup>

SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 67-68.

that date in apparent response to the IAEA's earlier request, the American government gave the IAEA copies of documents that supposedly supported the uranium claim.<sup>161</sup>

On March 3, 2003, the IAEA told the American government that the uranium documents were forgeries.<sup>162</sup>

After the United States on February 4, 2003 gave the UN's IAEA the forged documents along with the warning that the uranium reports could not be confirmed, it does not appear that the senior members of the Bush Administration ever again overtly used their own names to push the claim that Iraq had attempted to acquire uranium from Africa.<sup>163</sup> The next day on February 5, Secretary Powell gave a speech to the UN in which he did not make any uranium claims but as noted above he had made a uranium claim in an earlier speech on January 26, 2003 at the World Economic Forum.<sup>164</sup>

According to a presidential commission (the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction), and its *Report to the President of the United States* dated March 31, 2005, Secretary of State Powell during meetings at the CIA to vet his UN speech was informed that there were doubts about the reporting on the Niger uranium matter and he did not include it in his speech for that reason.<sup>165</sup> However, the INR at Secretary Powell's own State Department earlier in October 2002 and January 2003 had clearly stated that the uranium claim was highly dubious and that the supporting document was probably a hoax and a forgery.<sup>166</sup> Also as mentioned later, Secretary Powell has admitted that he never believed

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<sup>161</sup> *Id.* at 62, 67.

<sup>162</sup> *Id.* at 69.

<sup>163</sup> Although, as mentioned earlier, Hadley's op-ed. was published on February 16, 2003. *See supra* note 77. However it is not known when Hadley submitted the op-ed.

<sup>164</sup> SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 68, 64.

<sup>165</sup> COMMISSION ON THE INTELLIGENCE CAPABILITIES OF THE UNITED STATES REGARDING WEAPONS OF MASS DESTRUCTION, REPORT TO THE PRESIDENT OF THE UNITED STATES 213, note 210 (2005) [hereinafter PRESIDENTIAL COMM'N REPORT].\*

<sup>166</sup> SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 53-54, 62.

the uranium claim in President Bush's State of the Union Address.<sup>167</sup> Thus Secretary Powell kept the uranium claim out of his UN speech not just because of what he learned at said CIA meetings but because of what he already knew, which no doubt included the fact that the UN's IAEA had or soon would be getting the documents behind the uranium claim, which the IAEA later declared were forgeries.

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

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

[W]e judge it highly unlikely that [Niger] has sold uranium yellowcake to Baghdad in recent years. The IC [Intelligence Community] agrees with the IAEA assessment that key documents purported showing a recent Iraq-Niger sales accord are a fabrication. We judge that other reports from 2002 – one alleging warehousing of yellowcake for shipment to Iraq, a second alleging a 1999 visit by an Iraqi delegation to [Niger] – do not constitute credible evidence of a recent or *impending* sale.<sup>168</sup>

On July 6, 2003 *The New York Times* published Wilson's op ed article in which he accused the Administration of twisting the intelligence to exaggerate the Iraqi threat and further stated that the United States might have gone to war under false pretenses.<sup>169</sup>

On July 11, 2003 in response to Wilson's public criticism of President Bush's uranium claim in his State of the Union Address the CIA Director Tenet issued a statement (that was mentioned earlier).<sup>170</sup> Tenet in that statement not only revealed that the CIA had warned the British government against mentioning the uranium claim in its White Paper but Tenet also

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<sup>167</sup> See *infra* p. 36.

<sup>168</sup> SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 54, 71 (emphasis added).

<sup>169</sup> See *supra* p. 11.

<sup>170</sup> Tenet, *supra* note 123.

admitted that CIA officials who reviewed the draft of the State of the Union Address and its remarks concerning the Niger-Iraqi uranium deal had “*raised several concerns about the fragmentary nature of the intelligence* with [White House] National Security Council colleagues.”<sup>171</sup> After noting that the CIA raised said concerns Tenet stated: “Some of the language was *changed*.”<sup>172</sup> Tenet stated: “From what we know now, Agency officials in the end concurred that the text in the speech was factually correct – i.e. that the British government report said that Iraq sought uranium from Africa.”<sup>173</sup> Tenet did not disclose that the British government refused to share with the CIA the information that it had that allegedly corroborated its uranium claim.<sup>174</sup>

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

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

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

*Nevertheless*, the October 1st NIE on Iraq’s WMD stated that “Iraq also began vigorously trying to procure uranium ...”<sup>175</sup>

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<sup>171</sup> *Id.* paras. 6, 12 (emphasis added).

<sup>172</sup> *Id.* para. 12 (emphasis added).

<sup>173</sup> *Id.*

<sup>174</sup> At Libby’s trial his lawyers introduced as an exhibit a CIA paper, which stated:

[T]he British Government published a dossier ... which stated that “there is intelligence that Iraq has sought the supply of significant quantities of uranium from Africa.” [When the CIA] ... expressed concerns about the credibility of the reporting to the British ..., the British countered [the] CIA concerns ... by claiming they had corroborating evidence that Iraq sought uranium from Africa. *This alleged corroborating information, however, was not shared with us.*

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

<sup>175</sup> Government Exhibit 2A, Memorandum For The Vice President from John Hannah (June 9, 2003) 1 (PDF page 3), United States v. Libby, Cr. No. 05-394 (D.D.C. Feb. 7, 2007) (emphasis added).\* The CIA paper dated April 3, 2003 is Defense Exhibit 64, *supra* note 174.

Thus the CIA and a senior Intelligence Community official had serious concerns about the Niger uranium claim prior to the NIE but for some reason those serious concerns were not included in the NIE.<sup>176</sup> Perhaps Vice President Cheney put as much effort in covertly pushing and protecting the uranium claim in the NIE as he did in later covertly pushing that very claim as a defense against Wilson's accusations.

Also, there is a significant *pre war* intelligence report that was not disclosed in the Senate Report or presidential commission report. An article in *The Washington Post* published April 9, 2006, states that after the Pentagon asked for an authoritative judgment on the Niger uranium claim, the NIC issued a January 2003 memo that stated that the claim that Iraq sought uranium from Niger was baseless and should be laid to rest.<sup>177</sup> The *Post* article states: "Four U.S. officials with firsthand knowledge said in interviews that the memo, which has not been reported before, arrived at the White House as Bush and his highest-ranking advisers made the uranium story a centerpiece of their case for the rapidly approaching war against Iraq."<sup>178</sup>

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<sup>176</sup> The Senate Intelligence Committee investigated whether anyone involved in the drafting of the NIE felt any pressure or influence to conform their assessments to Administration policy or to alter their assessments as a result of communications with or visits by Administration officials and Vice President Cheney. SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 272-273, 275. There were complaints. The CIA's Deputy Director for Intelligence complained about "policymakers coming back to certain points or issues repeatedly, which I think, if an analyst wanted to view that, might be able to say or might think of that as some sort of if not pressure then some sort of a reluctance to accept the answer they were given" but she further stated that such repetition could also have been due to new developments. *Id.* at 274. According to a review by the CIA, there were "a lot" of questions on Iraq's WMD capabilities and connections to terrorists, and some "believed extensive questioning was a form of pressure on analysts." *Id.* at 275. Despite the complaints, the Committee concluded that it "did not find any evidence that Administration officials attempted to coerce, influence or pressure analysts to change their judgments related to Iraq's weapons of mass destruction capabilities." *Id.* at 284 (emphasis added). However, concerning Vice President Cheney the Committee concluded that it "found no evidence that the Vice President's visits to the Central Intelligence Agency were attempts to pressure analysts, were perceived as intended to pressure analysts by those who participated in the briefings on Iraq's weapons of mass destruction programs, or did pressure analysts to change their assessments." *Id.* at 285 (emphasis added). Thus although the Committee made the conclusion that other Administration officials did not coerce, influence, or pressure analysts to change their assessments, the Committee made no such conclusion completely exonerating Vice President Cheney. The Committee concluded only that Vice President Cheney's visits did not pressure analysts, and the Committee apparently made no conclusion regarding whether his visits coerced or at least influenced analysts.

<sup>177</sup> Barton Gellman & Dafna Linzer, *A 'Concerted Effort' to Discredit Bush Critic*, WASH. POST, Apr. 9, 2006, at A1, paras. 15-16.\*

<sup>178</sup> *Id.* para. 16.

An article in *The Nation* by Robert Scheer posted April 11, 2006 reveals a startling admission by Powell.<sup>179</sup> Regarding President Bush's claim in his State of the Union Address that Iraq had sought uranium, Scheer quotes Powell as telling him: "It should never have been in the speech. I didn't need Wilson to tell me that there wasn't a Niger connection. He didn't tell us anything we didn't already know. *I never believed it.*"<sup>180</sup> However as noted above, on January 26, 2003 Powell in a speech stated: "Why is Iraq still trying to procure uranium and the special equipment needed to transform it into material for nuclear weapons?"<sup>181</sup> Although Powell in his speech did not mention Niger, he was obviously referring to the earlier and similar claim on his State Department's website that Iraq's declaration to the UN "ignores efforts to procure uranium from Niger."<sup>182</sup> Thus Powell admitted that he never believed what President Bush said in his State of the Union Address, never believed what was on his State Department's website, nor apparently believed what was in his own speech wherein he repeated the website's claim without naming the country.

President Bush was obviously complicit in the changes in his 2003 State of the Union Address since he prepared, reviewed and rewrote the speech. The White House website shows pictures of President Bush preparing his 2003 State of the Union Address and under some of those pictures states: "President George W. Bush *prepares* his State of the Union Address with White House speechwriters",<sup>183</sup> "President Bush *reviews* the text" with a speechwriter,<sup>184</sup> "[s]ketching notes in the margin of speech *drafts*, President Bush *rewrites* portions of the address",<sup>185</sup> "President Bush *gives his speechwriting team a few points after revising the State of*

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<sup>179</sup> Robert Scheer, *Now Powell Tells Us*, NATION, Apr. 11, 2006.\*

<sup>180</sup> *Id.* para. 9 (emphasis added).

<sup>181</sup> HOUSE GOV'T REFORM COMM. MIN. REPORT: URANIUM DATABASE, *supra* note 63, at 4.

<sup>182</sup> SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 60-61.

<sup>183</sup> State of the Union 2003, The White House (2003) (emphasis added) (follow to picture 1 on top row).\*

<sup>184</sup> *Id.* (emphasis added) (follow to picture 2 on the top row).

<sup>185</sup> *Id.* (emphasis added) (follow to picture 3 on the top row).

*the Union Address*”,<sup>186</sup> and “[a]fter days of *revisions* and rehearsals, President Bush reads through his State of the Union speech during a late afternoon practice session.”<sup>187</sup>

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

As a member of the innermost circle, who, in this period, happened to spend more time with George W. Bush than did his wife – Dr. Rice worked with the President, *hour by hour, preparing* [his 2003 State of the Union Address], one of the most important [speeches] he would give in office.<sup>188</sup>

Suskind also notes that when Tenet expressed his concerns to Hadley about the uranium claim in the Cincinnati speech, Tenet sent a copy of a memo expressing those concerns to Rice (Hadley’s boss).<sup>189</sup> The report *Iraq on the Record* reveals that the CIA sent a memo addressed to Rice personally warning against including the uranium claim in a speech by the President.<sup>190</sup>

The White House has admitted that the CIA sent a second memo dated October 6, 2002 to both Rice and Hadley that described the evidence on the uranium claim as having some weakness.<sup>191</sup> That second CIA memo of October 6, as mentioned above, actually stated: “[M]ore on why we recommend removing the sentence about procuring uranium oxide from Africa: .... The evidence is weak .... [and] we differed with the British.”<sup>192</sup> Thus Rice knew that the CIA believed the uranium claim was weak when as a member of President Bush’s innermost circle she was spending hour after hour helping him prepare his 2003 State of the Union Address.

Iraq did not have any nuclear weapons nor had sought the uranium. The presidential commission report states that the Iraq Survey Group (ISG) conducted extensive investigations in Iraq (after the start of the war in March 2003) and found that during the first Gulf War in 1991

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<sup>186</sup> *Id.* (emphasis added) (follow to picture 4 on the top row).

<sup>187</sup> *Id.* (emphasis added) (follow to picture 4 on the bottom row).

<sup>188</sup> RON SUSKIND, *THE ONE PERCENT DOCTRINE* 247-48 (2006) (emphasis added).

<sup>189</sup> *Id.* at 244.

<sup>190</sup> HOUSE GOV’T REFORM COMM. MIN. REPORT: IRAQ, *supra* note 1, at 14.

<sup>191</sup> Press Briefing, The White House, Press Briefing on Iraq WMD and SOTU Speech, at 4 (July 22, 2003).\*

<sup>192</sup> SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 56-57.

“nearly all of the key nuclear facilities in Iraq ... were bombed and many of the facilities were largely destroyed.”<sup>193</sup> The presidential commission report further states that the ISG “concluded that Iraq had actually ended its nuclear program in 1991.”<sup>194</sup>

The ISG mentioned above was created in June 2003 and its report entitled *Comprehensive Report of the Special Advisor to the DCI on Iraq’s WMD*, dated September 30, 2004, was prepared for the CIA Director.<sup>195</sup> That report states: “Iraq did not possess a nuclear device, nor had it tried to reconstitute a capability to produce nuclear weapons after 1991.”<sup>196</sup>

Since Iraq did not have a nuclear device nor a nuclear program after 1991 then it was not surprising that no evidence was found that Iraq had recently sought uranium for a nuclear device as the Bush Administration contended. The presidential commission report states: “The Iraq Survey Group ... found no evidence that Iraq sought uranium from abroad after 1991.”<sup>197</sup> The ISG report states: “ISG has not found evidence to show that Iraq sought uranium from abroad after 1991 or renewed indigenous production of such material ...”<sup>198</sup>

The Senate Select Committee on Intelligence released a subsequent report on September 8, 2006 entitled *Report of the Select Committee on Intelligence on Postwar Findings About Iraq’s WMD Programs and Links to Terrorism and How They Compare with Prewar*

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<sup>193</sup> PRESIDENTIAL COMM’N REPORT, *supra* note 165, at 45, 60.

<sup>194</sup> *Id.* at 61.

<sup>195</sup> CHARLES DUELFER, COMPREHENSIVE REPORT OF THE SPECIAL ADVISOR TO THE DCI ON IRAQ’S WMD, vol. 1, Cover, Transmittal Message, Scope Note (2004) [hereinafter IRAQ SURVEY GROUP REPORT].\*

<sup>196</sup> *Id.* vol. 2, Nuclear, at 7.

<sup>197</sup> PRESIDENTIAL COMM’N REPORT, *supra* note 165, at 64.

<sup>198</sup> IRAQ SURVEY GROUP REPORT, *supra* note 195, vol. 2, Nuclear, at 9.

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

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

*Assessments.*<sup>199</sup> The Committee in its report discussed among other things the findings mentioned in above ISG report, which was released after the Committee released its earlier report.<sup>200</sup> Concerning the claim that Iraq had sought uranium for a nuclear weapon, the Committee in its subsequent report also stated that the “CIA’s assessments about the uranium reporting were *inconsistent and contradictory* following publication of the NIE [in October 2002].”<sup>201</sup> The Committee provided a description of the CIA’s inconsistencies and contradictions.<sup>202</sup> President Bush and said officials never disclosed those inconsistencies and contradictions when they made the above public uranium claims.

Thus the above uranium claims that President Bush, National Security Advisor Rice, Secretary Powell, and Secretary Rumsfeld made in January 2003 were false because Iraq had made no such attempt to acquire uranium. President Bush’s claim that the British government learned that Iraq had recently sought uranium from Africa was also false because the British government did not learn or even allege that such seeking of uranium was recent.

Also, the said uranium claims of President Bush, National Security Advisor Rice, Secretary Powell, and Secretary Rumsfeld were fraudulent, as that term is defined later,<sup>203</sup> because when they made said statements they did not disclose the warnings discrediting the

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<sup>199</sup> SENATE SELECT COMMITTEE ON INTELLIGENCE, 109TH CONG., REPORT OF THE SELECT COMMITTEE ON INTELLIGENCE ON POSTWAR FINDINGS ABOUT IRAQ’S WMD PROGRAMS AND LINKS TO TERRORISM AND HOW THEY COMPARE WITH PREWAR ASSESSMENTS (2006).\*

<sup>200</sup> *Id.* at 5, 8, 22, 25.

<sup>201</sup> *Id.* at 12-13 (emphasis added).

<sup>202</sup> *Id.* at 13-17 (emphasis added).

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

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

<sup>203</sup> *See infra* pp. 57-58.

uranium claim that were issued by members of America's Intelligence Community (IC), including the CIA, INR, and NIC. As noted earlier, those warnings included:

(1) a CIA analyst's suggestion in September 2002 to a member of the White House's NSC that the White House remove the uranium claim from a proposed speech;<sup>204</sup>

(2) the CIA Director's warning in October 2002 to the White House that the reporting on uranium claim in the Cincinnati speech was weak and that President Bush should not make the claim, and the CIA's warnings later that day to National Security Advisor Rice and her deputy Hadley that the evidence on the uranium claim was weak;<sup>205</sup>

(3) the State Department INR's dissent in the October 2002 NIE that the claim that Iraq sought uranium from Africa was highly dubious;<sup>206</sup>

(4) the INR's warnings to the CIA and other members of the Intelligence Community on January 13, 2003 (one week prior to the first of the five said uranium claims) that the document that supported the uranium claim was probably a hoax and a forgery;<sup>207</sup>

(5) the CIA's warning to the White House in January 2003 that it had several concerns about the fragmentary nature of the intelligence on the uranium deal mentioned in a draft of the State of the Union Address;<sup>208</sup>

(6) the NIC's January 2003 memo delivered to the White House at the time that President Bush and his senior advisers were making the uranium story a centerpiece of their case for the rapidly approaching war against Iraq, warning that the Niger uranium story was baseless and should be laid to rest;<sup>209</sup>

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<sup>204</sup> SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 51.

<sup>205</sup> *Id.* at 56-57; HOUSE GOV'T REFORM COMM. MIN. REPORT: IRAQ, *supra* note 1, at 14; Press Briefing, The White House, *supra* note 191, at 4.

<sup>206</sup> SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 53-54.

<sup>207</sup> *Id.* at 62.

<sup>208</sup> Tenet, *supra* note 123, para. 12.

<sup>209</sup> Gellman & Linzer, *supra* note 177, paras. 15-16.

(7) the NSC's own belief as expressed in January 2003 to the NIO that the nuclear case against Iraq was weak;<sup>210</sup>

(8) the American government's warning in early February 2003 to the UN's IAEA that it could not confirm the uranium reports;<sup>211</sup>

(9) the CIA's warning in early February 2003 in meetings with Secretary Powell that there were doubts about the reporting on the Niger uranium deal.<sup>212</sup>

Furthermore, Secretary Powell has admitted that he "never believed" the uranium claim in President Bush's State of the Union Address.<sup>213</sup>

The statements that Vice President Cheney in July 2003 directed Libby to make to the press to support President Bush's uranium claim were fraudulent because when he directed Libby to disclose the NIE's statement that Iraq had tried to procure uranium he did not direct Libby to disclose the above warnings, and more specifically he did not direct Libby to disclose that (1) the NIE also contained the INR's dissent that the uranium claim was highly dubious,<sup>214</sup> (2) the NIC that issued the NIE later issued the above-mentioned January 2003 memo stating that the claim that Iraq sought uranium from Niger was baseless,<sup>215</sup> (3) the NIC later issued the April 5, 2003 memorandum stating that it was highly unlikely that Niger sold uranium to Iraq in recent years,<sup>216</sup> and (4) a member of Vice President Cheney's staff had submitted to him a memorandum dated June 9, 2003 that stated that prior to the publication of the NIE the CIA had expressed serious concerns about the Niger uranium claim.<sup>217</sup>

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<sup>210</sup> SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 240.

<sup>211</sup> *Id.* at 67-68.

<sup>212</sup> PRESIDENTIAL COMM'N REPORT, *supra* note 165, at 213, note 210.

<sup>213</sup> Scheer, *supra* note 179, para. 9.

<sup>214</sup> SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 53-54.

<sup>215</sup> *Id.* at 54; Gellman & Linzer, *supra* note 177, paras. 15-16.

<sup>216</sup> SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 71.

<sup>217</sup> Government Exhibit 2A, Memorandum For The Vice President from John Hannah, *supra* note 175.

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

As noted by Bob Woodward in *Plan Of Attack*, former White House Chief of Staff Andrew Card in September 2002 gathered in the White House Situation Room a group of senior White House staffers, a group that became known as the White House Iraq Group (WHIG).<sup>218</sup> WHIG met weekly in the White House Situation Room.<sup>219</sup> The members of WHIG included Card, Rice, Hadley, Libby, and Nicholas Calio who was the director of the White House's congressional relations office.<sup>220</sup> WHIG also included Karl Rove.<sup>221</sup>

The purpose of WHIG was to persuade the public and Congress of the need to invade Iraq.<sup>222</sup> Referring to the above initial meeting of WHIG, Woodward stated: "Calio [was] ... essentially the president's personal lobbyist on Capitol Hill. The selling of regime change in Iraq was about to begin."<sup>223</sup>

According to Woodward, WHIG "coordinat[ed] the daily message on Iraq and the 'echo' – the effort to reinforce the president's themes and arguments with statements and media appearances by administration officials and friendly members of Congress."<sup>224</sup> In January 2003 "Card's White House Iraq Group was planning a big rollout of speeches and documents to counter Saddam and the growing international antiwar movement."<sup>225</sup> Not only was Libby a member of WHIG but as mentioned earlier according to Libby's CIA briefer: "Libby was in charge within the administration (or at least the White House side) for *producing papers arguing*

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<sup>218</sup> BOB WOODWARD, *PLAN OF ATTACK* 168 (2004). See also HOUSE JUD. COMM. MIN. REPORT: BUSH V. CONST., *supra* note 102, at 27 (WHIG was formed by August 2002).

<sup>219</sup> HOUSE JUD. COMM. MIN. REPORT: BUSH V. CONST., *supra* note 102, at 27.

<sup>220</sup> WOODWARD, *supra* note 218, at 168, 137. See also HOUSE JUD. COMM. MIN. REPORT: BUSH V. CONST., *supra* note 102, at 27 (WHIG included Calio, Rice, Hadley, and Libby).

<sup>221</sup> HOUSE JUD. COMM. MIN. REPORT: BUSH V. CONST., *supra* note 102, at 27.

<sup>222</sup> *Id.*

<sup>223</sup> WOODWARD, *supra* note 218, at 168.

<sup>224</sup> *Id.* at 172.

<sup>225</sup> *Id.* at 286. The month of January 2003 is ascertained from the sequence of events. *Id.* at 285-87.

*the case for Iraqi WMD* and ties between Iraq and al-Qaida, which explains Libby's and the Vice President's interest in the Iraq/Niger/Uranium case."<sup>226</sup>

As mentioned earlier, President Bush chairs the NSC, and the regular attendees at NSC meetings include the Vice President, the Secretary of State, the Secretary of Defense, and the National Security Advisor. The White House website states that the White House Chief of Staff (Card) was "invited to attend any NSC meeting."<sup>227</sup> Thus Rice and Card would attend the meetings of both WHIG and the NSC. The White House website states that the NSC is the "President's principal forum for considering national security and foreign policy matters .... [, and the NSC] serves as the President's principal arm for coordinating these policies."<sup>228</sup> Thus it appears that WHIG and the NSC coordinated the five uranium claims that the Administration made in January 2003.

#### *F. Motive to Make False and Fraudulent Statements*

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

Under the Constitution, it is the Congress that has the power to "declare War."<sup>229</sup> Under the War Powers Resolution of 1973, President Bush could not use military force in Iraq for more than ninety days without a Congressional declaration of war or a specific war resolution.<sup>230</sup>

Also, under the War Powers Resolution any time American troops are engaged in hostilities

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<sup>226</sup> Defense Exhibit 421, *United States v. Libby*, Cr. No. 05-394 (D.D.C. Jan. 24, 2007), *supra* note 98 (emphasis added).

<sup>227</sup> National Security Council, *supra* note 159.

<sup>228</sup> *Id.*

<sup>229</sup> U.S. CONST. art. I, § 8.

<sup>230</sup> 50 U.S.C. § 1544(b) (2000).

outside the United States without a declaration of war or a specific war resolution, “such forces shall be removed by the President if the Congress so directs by concurrent resolution”.<sup>231</sup> The October 2002 war resolution did not supersede the earlier War Powers Resolution of 1973.<sup>232</sup>

Thus Congress could not only repeal the war resolution prior to the start of the war but also could repeal it and order President Bush to remove the troops after he started the war.

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

The President is authorized to use the Armed Forces of the United States *as he determines to be necessary and appropriate* in order to – (1) defend the national security of the United States against the continuing threat posed by Iraq; and (2) enforce all relevant United Nations Security Council resolutions regarding Iraq.<sup>233</sup>

The above two grounds for the war were closely related to the earlier portions of the resolution that stated that international weapons inspectors had left Iraq in 1998 because Iraq had thwarted their efforts, and that it was the belief of Congress that Iraq was “actively seeking a nuclear weapons capability.”<sup>234</sup>

The war resolution had not been unanimous, the vote in the House had been 296 to 133, and the vote in the Senate had been 77 to 23, and the resolution had some strings attached. The resolution stated that the “President shall, at least once every 60 days, submit to the Congress a report on matters relevant to this joint resolution.”<sup>235</sup>

President Bush and said officials obtained the Congressional resolution for the war in October 2002, but they did not start the war until five months later in March 2003. During that

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<sup>231</sup> 50 U.S.C. § 1544(c) (2000).

<sup>232</sup> Iraq War Res. of 2002, *supra* note 4, Pub. L. No. 107-243, § 3(c)(2), 116 Stat. 1501.

<sup>233</sup> *Id.*, Pub. L. No. 107-243, § 3(a)(1)-(2), 116 Stat. 1501 (emphasis added).

<sup>234</sup> *Id.*, Pub. L. No. 107-243, introduction, paras. 4, 6, 116 Stat. 1498.

Congress acquired this belief that Iraq was seeking a nuclear weapons capability no doubt because of the Bush Administration’s misleading statements on the matter. *See* HOUSE GOV’T REFORM COMM. MIN. REPORT: IRAQ, *supra* note 1, at 7-8, 13.

<sup>235</sup> Iraq War Res. of 2002, *supra* note 4, Public L. No. 107-243, § 4(a), 116 Stat. 1501.

five months the Administration needed to continue to provide to Congress information that persuaded Congress that Iraq was a continuing threat to the security of the United States and was not complying with UN resolutions, or else Congress might withdraw the resolution or at least modify it so that President Bush could not initiate the war at his own discretion.

After Congress passed the war resolution, the UN Security Council on November 8, 2002 passed S.C. Res. 1441 that demanded that Iraq provide 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.”<sup>236</sup> That resolution also set forth an enhanced weapons inspections regimen in Iraq that gave UN inspectors unrestricted access to any sites and buildings as well as the right to “remove, destroy, or render harmless all ... [such] weapons, ... materials, and other related items.”<sup>237</sup>

Iraq then agreed to the resolution,<sup>238</sup> on November 27, 2002 allowed UN weapons inspectors to reenter Iraq,<sup>239</sup> and on December 7 Iraq provided a declaration to the UN in response to S.C. Res. 1441.<sup>240</sup>

According to Woodward’s *Plan Of Attack*, in the first week of January 2003 President Bush had a discussion with then National Security Advisor Rice about the UN weapons inspections in Iraq.<sup>241</sup> According to Woodward the press reports of Iraqis cooperating with UN weapons inspectors by opening up buildings “infuriated” President Bush who believed in Woodward’s words that the “unanimous international consensus of the November [UN]

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<sup>236</sup> S.C. Res. 1441, ¶ 3, U.N. Doc. S/RES/1441 (Nov. 8, 2002).\*

<sup>237</sup> *Id.* ¶ 7.

<sup>238</sup> Press Release, UN News Centre, Iraq, in Letter to UN, Accepts New Security Council Resolution on Weapons Inspections (Nov. 13, 2002).\*

<sup>239</sup> Press Release, UN News Centre, Resuming Weapons Inspections in Iraq, UN Teams Visit 3 Sites Outside Baghdad (Nov. 27, 2002).\*

<sup>240</sup> Press Release, UN News Centre, Iraq Hands over Declaration to UN (Dec. 7, 2002).\* Iraq declared uranium purchases that it had made in the 1970’s and early 1980’s. *See supra* note 198.

<sup>241</sup> WOODWARD, *supra* note 218, at 253.

resolution was beginning to fray.”<sup>242</sup> President Bush told Rice that the “pressure isn’t holding together.”<sup>243</sup> President Bush commented about the antiwar protests in the United States and Europe.<sup>244</sup>

In response to the fact that Iraq had allowed UN weapons inspectors to reenter Iraq, Congresswoman Sheila Jackson Lee and four other Members of Congress on January 7, 2003 submitted House Concurrent Resolution 2, which expressed the sense of Congress that Congress should repeal the war resolution in order to allow more time for the UN weapons inspections.<sup>245</sup> The new resolution contended that the threat posed by Iraq had lessened because after the war resolution was passed Iraq then “allowed international weapons inspectors to re-enter Iraq in order to identify and destroy Iraq’s weapons of mass destruction stockpiles and development capabilities.” The new resolution stated “Congress should reexamine the threat posed by Iraq, including by allowing time to review fully and accurately the findings of the international weapons inspectors.”

The Bush White House would certainly have learned about the new resolution since the White House had a congressional relations office that its director Calio ran like an intelligence agency with twenty-five people who monitored everything in Congress including closed-door briefings.<sup>246</sup> As mentioned earlier, Calio was President Bush’s personal lobbyist to Congress and was also a member of WHIG.<sup>247</sup>

On January 24, 2003, one hundred and thirty Members of Congress sent a letter to President Bush that referred to the report of UN weapons inspectors that was to be released in a

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<sup>242</sup>

*Id.*

<sup>243</sup>

*Id.*

<sup>244</sup>

*Id.*

<sup>245</sup>

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

<sup>246</sup>

WOODWARD, *supra* note 218, at 137, 168, 171.

<sup>247</sup>

*Id.* at 168; HOUSE JUD. COMM. MIN. REPORT: BUSH V. CONST., *supra* note 102, at 27.

few days on January 27 and they encouraged President Bush to “sufficiently weigh future decisions regarding Iraq” in light of that UN report.<sup>248</sup> The Members of Congress encouraged President Bush to consider any UN requests for “additional inspection time” and they stated that the “U.S. should make every attempt to achieve Iraq’s disarmament through diplomatic means ... in accordance with the process articulated in UN Security Council resolution 1441.”

On January 27, 2003, which was the day before President Bush gave his State of the Union Address to Congress and claimed that Iraq had recently sought uranium from Africa, the UN in a press release regarding Iraq’s response to S.C. Res. 1441 stated that “it would appear that Iraq had decided in principle to provide cooperation on substance in order to complete the disarmament task through inspection.”<sup>249</sup> Although there were some outstanding questions concerning chemical and biological weapons,<sup>250</sup> the press release stated that Mohamed ElBaradei, the head of the UN’s IAEA that conducted the nuclear weapons inspections, reported that after sixty days of inspections with a total of 139 inspections at 106 locations the IAEA had found “no evidence that Iraq had revived its nuclear weapons programme” and “no prohibited nuclear activities had been identified.”<sup>251</sup> The press release stated that the inspectors had investigated the claim that Iraq had sought to import uranium and the Iraqis denied the claim but the inspectors would continue to pursue the matter.<sup>252</sup>

The UN press release concluded with the statement of ElBaradei:

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<sup>248</sup> Letter from 130 Members of Congress to President George W. Bush, Jan. 24, 2003.\*

<sup>249</sup> Press Release, Security Council, Security Council Briefed by Chief UN Weapons Experts on First 60 Days of Inspections in Iraq, para. 2, U.N. Doc. SC/7644 (Jan. 27, 2003).\*

<sup>250</sup> *Id.* paras. 3-4.

<sup>251</sup> *Id.* paras. 6-7. For ElBaradei’s above statements in his actual report to the Security Council, *see* International Atomic Energy Agency (IAEA), *The Status of Nuclear Inspections in Iraq*, paras. 27, 14 (Jan. 27, 2003) (prepared by Mohamed ElBaradei).\*

<sup>252</sup> U.N. Doc. SC/7644, *supra* note 249, para. 43; *see also* IAEA, *supra* note 251, para. 17 (containing ElBaradei’s statements regarding uranium).

“With our verification system now in place, barring exceptional circumstances, and provided there is sustained proactive cooperation by Iraq, we should be able, within the next few months, to provide credible assurance that Iraq has no nuclear weapons programme. These few months would be a valuable investment in peace because they could help us avoid a war.”<sup>253</sup>

On February 14, 2003 the UN issued another press release stating that Iraq’s cooperation with UN weapons inspectors “continued to improve” and that while many banned weapons still remained unaccounted for, the UN inspectors “to date ... had *found no weapons of mass destruction*.”<sup>254</sup> The press release specifically stated that the IAEA’s nuclear weapons inspectors had conducted a total of 177 inspections at 125 locations and “[t]o date ... had found no evidence of ongoing prohibited nuclear or nuclear-related activities in Iraq.”<sup>255</sup>

On February 5, 2003, Congressman Peter DeFazio and twenty-nine other Members of Congress submitted another resolution, House Joint Resolution 20, to actually repeal the war resolution.<sup>256</sup>

Thus during the nine day period of January 20 to 29, 2003 when President Bush submitted the above reports to Congress and his said senior officials made their speeches and statements about the uranium, they were facing and perhaps even infuriated by Iraq’s cooperation with S.C. Res. 1441. It should again be noted that according to Woodward in January 2003 “Card’s White House Iraq Group was planning a big rollout of speeches and documents to counter Saddam and the growing international antiwar movement.”<sup>257</sup>

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<sup>253</sup> U.N. Doc. SC/7644, *supra* note 249, para. 48; *see also* IAEA, *supra* note 251, para. 27 (containing ElBaradei’s statement).

<sup>254</sup> Press Release, Security Council, Iraq Cooperating with Disarmament Procedures, but Many Banned Weapons Remain Unaccounted for, Inspectors Tell Security Council, para. 1, U.N. Doc. SC/7664 (Feb. 14, 2003) (emphasis added).\*

<sup>255</sup> *Id.* paras. 45, 58.

The press release mentioned that UN inspectors had begun destroying 50 litres of mustard gas declared by Iraq. *Id.*, para. 21. Thus the UN did not consider the mustard gas to be a weapon of mass destruction or else the UN would not have stated that the weapons inspectors had found no weapons of mass destruction. *See Id.*, para. 1.

<sup>256</sup> H.R.J. Res. 20, 108th Cong. (2003).\*

<sup>257</sup> WOODWARD, *supra* note 218, at 286.

Also, at the time that President Bush and his said senior officials made their five uranium claims between January 20 and 29 there was pending the Congressional resolution of January 7 that sought to delay the start of the war basically because the grounds for the war had been placated. As mentioned earlier, the war resolution stated that weapons inspectors had left Iraq in 1998 because Iraq had thwarted their efforts.<sup>258</sup> The war resolution authorized President Bush to use military force in order to (1) defend the national security against the continuing threat posed by Iraq and (2) enforce UN Security Council resolutions.<sup>259</sup> However, as noted in the January 7 resolution Iraq had recently allowed the reentry of weapons inspectors who could destroy any weapons of mass destruction.<sup>260</sup> Thus it certainly appeared that Iraq did not present a threat to the security of the United States and also was cooperating with UN Security Council resolutions. Therefore the grounds for the war resolution had been placated and there was no longer a need for a war resolution that gave President Bush total discretion as to when to start a war against Iraq.

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

Also at the time of his State of the Union Address, President Bush was obviously aware of the letter that 130 Members of Congress had sent to him on January 24 encouraging him to

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<sup>258</sup> Iraq War Res. of 2002, *supra* note 4, Pub. L. No. 107-243, introduction, para. 4, 116 Stat. 1498.

<sup>259</sup> *Id.*, Pub. L. No. 107-243, § 3(a), 116 Stat. 1501.

<sup>260</sup> H.R. Con. Res. 2 (2003), *supra* note 245.

sufficiently weigh the report of the UN weapons inspectors and to allow any requested additional inspection time. The Members of Congress encouraged President Bush to achieve Iraq's disarmament through diplomatic means in accordance with S.C. Res. 1441.

To thwart UN and Congressional efforts to delay the start of the war, the Administration submitted its uranium claims as evidence that validated the grounds for the war, those grounds being that Iraq was a continuing threat to national security and not complying with UN resolutions. To persuade Congress that Iraq was such a threat to national security and not complying with UN resolutions, President Bush in his war resolution report told Congress that Iraq had since 1998 made attempts to acquire uranium and by not disclosing that fact in its December 7, 2002 declaration Iraq was not complying with S.C. Res. 1441 that required it to make a complete declaration of all aspects of its programs to develop nuclear weapons.<sup>261</sup> A few days later in his State of the Union Address President Bush told Congress that the British government had learned that Iraq *recently* sought significant quantities of uranium from Africa, which was clearly for nuclear weapons since immediately prior to making that claim he stated that Iraq in the past “had an advanced nuclear weapons development program, had a design for a nuclear weapon, and was working on five different methods of enriching uranium for a bomb.”<sup>262</sup>

National Security Advisor Rice, Secretary Powell, and Secretary Rumsfeld made their similar uranium claims: Iraq had not disclosed to the UN its efforts to get uranium from abroad, was still trying to procure uranium for nuclear weapons, and had a design for a nuclear weapon and recently sought significant quantities of uranium from Africa.<sup>263</sup>

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<sup>261</sup> HOUSE DOC. NO. 108-23, *supra* note 72, at 4-5.

<sup>262</sup> HOUSE DOC. NO. 108-1, *supra* note 69, at 8.

<sup>263</sup> *See supra* pp. 14-15.

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

ElBaradei on March 7, 2003 publicly informed the UN Security Council that the documents supposedly supporting the uranium claim were not authentic and therefore the allegations that Iraq attempted to buy uranium from Niger in recent years were unfounded.<sup>264</sup> ElBaradei also reported: “After three months of intrusive inspections, we have to date found no evidence or plausible indication of the revival of a nuclear weapons programme in Iraq.”<sup>265</sup>

Congressman Henry Waxman in a letter to President Bush dated March 17, 2003 informed President Bush that he had voted for the war resolution but that in the “last ten days ... it has become incontrovertibly clear that a key piece of evidence you and other Administration officials have cited regarding Iraq’s efforts to obtain a nuclear weapon is a hoax.”<sup>266</sup> Waxman noted ElBaradei’s report that the documents were not authentic and noted recent press reports that stated that American intelligence officials had doubts about the veracity of the evidence on the uranium claim long before ElBaradei’s report.<sup>267</sup> Waxman stated:

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<sup>264</sup> See Press Release, UN News Centre, IAEA Sees Progress in Identifying Iraq’s Nuclear Capabilities, Security Council Told, para. 7 (Mar. 7, 2003);\* International Atomic Energy Agency (IAEA), *The Status of Nuclear Inspections in Iraq: An Update* 4 (Mar. 7, 2003) (prepared by Mohamed ElBaradei).\*

<sup>265</sup> See UN Press Release, *supra* note 264, para. 2; IAEA, *supra* note 264, at 6.

<sup>266</sup> Letter from Congressman Henry A. Waxman to The President (George W. Bush), Mar. 17, 2003, paras. 3, 2.\*

<sup>267</sup> *Id.* paras. 2, 16, 18.

It appears that at the same time that you ... [and other Administration officials] were citing Iraq's efforts to obtain uranium from Africa as a crucial part of the case against Iraq, U.S. intelligence officials regarded this very same evidence as unreliable. If true, this is deeply disturbing: it would mean that your Administration asked the U.N. Security Council, the Congress, and the American people to rely on information that your own experts knew was not credible.<sup>268</sup>

Congressman Waxman called on President Bush to provide Congress with a full accounting of the matter and more specifically to address whether the CIA reviewed his State of the Union Address and if so what did the CIA say about the uranium claim.<sup>269</sup> Waxman asked President Bush for an expeditious response due to the "urgency of the situation", obviously referring to the beginning of his letter where he noted that "[u]pon your order, our armed forces will soon initiate the first preemptive war in our nation's history."<sup>270</sup>

Two days after Congressman Waxman's letter that mentioned ElBaradei's report and that called on President Bush to provide an accounting to Congress about the uranium claims, President Bush on March 19, 2003 started the war rather than provide such an accounting to Congress or allow the UN weapons inspectors to finish their inspections, the results of which would have caused further Congressional efforts and resolutions to delay or stop the war.

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

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<sup>268</sup> *Id.* para. 20.

<sup>269</sup> *Id.* para. 23.

<sup>270</sup> *Id.* paras. 24, 1.

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

Even though Congress now knows the truth and that Iraq had no nuclear weapons or programs, nor sought uranium, Congress has not yet repealed the war resolution perhaps because of what Secretary Powell described as the Pottery Barn rule: You break it, you own it.<sup>272</sup> However, Congressman Sam Farr on January 11, 2007 filed House Bill 413 that seeks to repeal the war resolution.<sup>273</sup>

### G. *The Downing Street Minutes*

Also there is an alleged memo, called the Downing Street Minutes, concerning a meeting attended by Prime Minister Tony Blair and senior British officials.<sup>274</sup> The memo states:

C [the head of British intelligence] reported on his recent talks in Washington. There was a perceptible shift in attitude. Military action was now seen as inevitable. Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy. The NSC had no patience with the UN route, and no enthusiasm for publishing material on the Iraqi regime's record.<sup>275</sup>

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U.N. Doc. S/2003/580 (May 30, 2003).\* The above reference about some quantities of proscribed items being found was apparently to mustard gas. *Id.* at 30.

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

Concerning weapons of mass destruction, since it might be argued that *any* chemical or biological weapon could be considered a weapon of mass destruction, then any statement that Iraq had no weapons of mass destruction should also state that such weapons do not include insignificant chemical or biological weapons but obviously do include all nuclear weapons. For the ISG's definition of weapons of mass destruction, see IRAQ SURVEY GROUP REPORT, *supra* note 195, vol. 3, Glossary and Acronyms, at 15.

<sup>272</sup> WOODWARD, *supra* note 218, at 150.

<sup>273</sup> H.R. 413, 110th Cong. (2007).\*

<sup>274</sup> HOUSE JUD. COMM. MIN. REPORT: BUSH V. CONST., *supra* note 102, at 20.

<sup>275</sup> *Id.*

The memo was dated July 23, 2002,<sup>276</sup> which was the summer before President Bush started the war.

*H. Bush Administration's 237 Misleading Statements on Iraq*

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

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

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

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<sup>276</sup>

*Id.*

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HOUSE GOV'T REFORM COMM. MIN. REPORT: IRAQ, *supra* note 1, at ii, 3.

<sup>278</sup>

*Id.* at 6.

<sup>279</sup>

*Id.* at ii, 3.

<sup>280</sup>

*Id.* at ii, 3-4.

<sup>281</sup>

*Id.* at 3.

<sup>282</sup>

*Id.* at 25-29.

### III. THE CRIMINAL VIOLATIONS AND IMPEACHABLE OFFENSES

#### A. Articles I and II Against President Bush: Making False and Fraudulent Statements to Congress, Violation Of 18 U.S.C. § 1001

Concerning the two uranium claims that President Bush made directly to Congress, which are the basis of Articles I and II set forth at the end of this report,<sup>283</sup> the criminal statute 18

U.S.C. § 1001(a) states:

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

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

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

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

shall be fined under this title or imprisoned not more than 5 years, or both.<sup>284</sup>

President Bush’s uranium claims in his war resolution report to Congress and in his State of the Union Address to Congress were *false*. As mentioned earlier, the presidential commission report states: “The Iraq Survey Group ... found no evidence that Iraq sought uranium from abroad after 1991.”<sup>285</sup> The ISG report states: “ISG has not found evidence to show that Iraq sought uranium from abroad after 1991 ...”<sup>286</sup> The IAEA reports of March 7 and April 14, 2003 stated that allegations that Iraq sought uranium from Niger were unfounded because the supporting documents were not authentic.<sup>287</sup>

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<sup>283</sup> See *infra* pp. 84-89.

<sup>284</sup> 18 U.S.C. § 1001(a) (2000) (emphasis added), *amended by* Pub. L. 108-458 (2004) (substituted wording on penalty in subsec. (a) to shall “be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.”

<sup>285</sup> PRESIDENTIAL COMM’N REPORT, *supra* note 165, at 64.

<sup>286</sup> IRAQ SURVEY GROUP REPORT, *supra* note 195, vol. 2, Nuclear, at 9.

<sup>287</sup> See *supra* pp. 51 (including note 264), 52-53 (including note 271).

More specifically President Bush's statement in his war resolution report that Iraq had since 1998 made "attempts to acquire uranium" was a false statement because there had been no such attempts to acquire uranium.<sup>288</sup>

President Bush's statement in his State of the Union Address that the "British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa" was false because Hussein had not sought the uranium and thus the British government never actually learned that he did but might have judged that he did. The synonym for 'learn' is "Discover".<sup>289</sup> There is a world of difference between making a judgment, which the British government did,<sup>290</sup> and making a discovery, which the British government did not do.

President Bush's statement in his State of the Union Address was also false because the British government never learned or alleged that any such seeking of uranium was *recent*.<sup>291</sup> The

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<sup>288</sup> Although President Bush did not sign the war resolution report that his Administration prepared and he submitted it by means of an introductory letter, HOUSE DOC. NO. 108-23, *supra* note 72, at 1, he did make the statements in the report. To 'make' means to "cause ... something ... to exist ...[, to] legally perform, as by executing, signing, or delivering ... a document." BLACK'S LAW DICTIONARY 975 (8th ed. 2004). President Bush did make the statements in the report since he caused that document to come into existence in compliance with the war resolution that required him to submit the report, and he caused that document to be delivered to Congress. *See* Iraq War Res. of 2002, *supra* note 4, Pub. L. No. 107-243, § 4, 116 Stat. 1501. According to the Supreme Court, even though President Bush might not have personally written the statements in the report, he did make the statements since there was deliberate action on his part in submitting the statements. In a case involving a similar statute that stated that it was a crime when a bank employee "makes any false entry" in bank records, the Court in holding that the statute covered situations where the defendant did not personally write the entry, stated:

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

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

<sup>289</sup> WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1286 (3d. ed. 1993).

<sup>290</sup> *See supra* note 122.

<sup>291</sup> *See supra* note 122.

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

word ‘recently’ had been in the original draft of the State of the Union Address that the White House sent to the CIA.<sup>292</sup>

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

Fraud is defined as a “knowing misrepresentation of the truth or *concealment of a material fact to induce* another to act to his or her detriment.”<sup>293</sup> According to the legal encyclopedia *Corpus Juris Secundum*, fraud is “a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to *gain an advantage* over another by *false suggestions or by suppression of the truth.*”<sup>294</sup>

Fraudulent misrepresentation may be effected by *half truths* calculated to deceive; and a *half truth* may be more *misleading* than an outright lie. A *representation literally true* is actionable if used to create an *impression substantially false*, as where it is accompanied by conduct calculated to deceive or *where it does not state matters which materially qualify that statement.*<sup>295</sup>

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

[W]hile there is an option of silence, once a defendant volunteers information, he has an obligation to refrain from telling *half-truths* or from excluding information necessary to make the statements accurate. Since [the defendant] responded to the questions, he had a duty to include all information necessary to make his statements truthful.<sup>296</sup>

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<sup>292</sup> SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 65.

<sup>293</sup> BLACK’S LAW DICTIONARY 685 (8th ed. 2004) (emphasis added).

<sup>294</sup> 37 C.J.S. *Fraud* § 2 (2003) (emphasis added).

<sup>295</sup> *Id.* § 24 (footnotes omitted, emphasis added).

<sup>296</sup> *United States v. Cisneros*, 26 F.Supp.2d 24, 42 (D.D.C. 1998) (citation omitted, emphasis added), *appeal dismissed*, *United States v. Cisneros*, 169 F.3d 763 (D.C.Cir. 1999).

Civil fraud cases hold that when a person has no duty to speak then that person has no duty to make a disclosure, but if that person does make a disclosure then that person assumes a duty to disclose the whole truth and all material facts rather than leave a false impression.<sup>297</sup>

President Bush's uranium claims in his war resolution report and his State of the Union Address were *fraudulent* since he suppressed material facts: the American Intelligence Community's warnings discrediting the uranium claim.<sup>298</sup> President Bush made the fraudulent uranium claims to induce Congress not to repeal or modify the war resolution. The report *Iraq on the Record* states that the Administration's said uranium claims were misleading.<sup>299</sup>

President Bush's uranium claim in his State of the Union Address was classic fraud. The first draft asserted the American view that Iraq had sought uranium but the American CIA raised several concerns about the fragmentary nature of the intelligence. Instead of deleting the claim or disclosing the whole truth including the CIA's concerns, the speech was fixed so that it gave the same impression as the first draft and was also, in Tenet's words, "factually correct" since it only repeated what the "British government report said."<sup>300</sup> Even assuming momentarily that the statement was factually correct as Tenet claimed, it was still fraudulent since fraud may consist

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<sup>297</sup> See *Baskin v. Hawley*, 807 F.2d 1120, 1132 (2d Cir. 1986); *JKC Holding Co. LLC v. Washington Sports Ventures*, 264 F.3d 459, 469 (4th Cir. 2001); *Trustees of the Northwest Laundry v. Burzynski*, 27 F.3d 153, 157 (5th Cir. 1994); *Union Pacific Resources Group v. Rhone-Poulenc*, 247 F.3d 574, 586 (5th Cir. 2001); *Southeastern Financial v. United Merchants & Mfrs.*, 701 F.2d 565, 566 (5th Cir. 1983); *In Re Sallee*, 286 F.3d 878, 896 (6th Cir. 2002).

Unlike criminal fraud, civil fraud also requires proof of reliance on the fraudulent statement and proof of actual injury caused by the statement. *Trustees of the Northwest Laundry*, *supra*, 27 F.3d at 157. The criminal statute 18 U.S.C. § 1001 does not contain elements of reliance or injury but only that the statement was material, which means capable of affecting a government decision or function. The issue of materiality is discussed later. See *infra* pp. 64-66.

<sup>298</sup> See *supra* pp. 39-41.

<sup>299</sup> HOUSE GOV'T REFORM COMM. MIN. REPORT: IRAQ, *supra* note 1, at 3, 13-15. The report defined a statement as misleading "if it conflicted with what intelligence officials knew at the time or involved the selective use of intelligence or the failure to include essential qualifiers or caveats." *Id.* at 2. The report and *Database* state that the uranium claims were misleading because the CIA had earlier expressed doubts about the claim in two memos to the White House including one addressed to then National Security Advisor Rice, and also the then CIA Director Tenet argued personally against using the claim in a telephone call to Rice's deputy, Hadley. *Id.* at 14-15; HOUSE GOV'T REFORM COMM. MIN. REPORT: URANIUM DATABASE, *supra* note 63, at 1-5.

<sup>300</sup> Tenet, *supra* note 123, para. 12.

of “half truths calculated to deceive.”<sup>301</sup> As held in *Cisneros*, under 18 U.S.C. § 1001 once a defendant volunteers information, he or she has an “obligation to refrain from telling half-truths” and must provide “all information necessary to make his [or her] statements truthful.”<sup>302</sup> Senator Carl Levin has stated that President Bush’s uranium claim in his State of the Union Address was highly deceptive because it created the false impression that our intelligence community believed the claim that Iraq had sought uranium.<sup>303</sup>

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

Although President Bush will try to make the excuse that he did not have knowledge that his statements were false or fraudulent, that assertion would fail as a defense. Few convictions are based on confessions but rather most are based on circumstantial evidence. Libby never confessed but Fitzgerald in Counts Two and Three of Libby’s Indictment charged him with

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<sup>301</sup> 37 C.J.S. *Fraud* § 24 (2003).

<sup>302</sup> *United States v. Cisneros*, 26 F.Supp.2d 24, 42 (D.D.C. 1998) (citation omitted, emphasis added), *appeal dismissed*, *United States v. Cisneros*, 169 F.3d 763 (D.C.Cir. 1999).

<sup>303</sup> Statement/News Release, Senator Carl Levin, Nomination of Condoleezza Rice to be Secretary of State (Jan. 25, 2005).<sup>\*</sup> Senator Levin stated that the CIA received the original draft of the State of the Union speech that asserted the purported American view that Iraq had sought uranium and that did not mention the British. *Id.* paras. 12-13. A senior CIA staff member then called the NSC to repeat the CIA’s concerns about the allegation. *Id.* para. 13. Senator Levin stated that the NSC and White House instead of removing the text from the speech “changed the text to make reference to the British view, suggesting, of course, that the US believed the British view to be accurate.” *Id.* Senator Levin stated that this was a “formula [that] was highly deceptive” since the “only reason” to say that the British learned that Iraq was seeking uranium from Africa “was to create the impression that [the US] believed it” although “our Intelligence Community did not believe it.” *Id.* paras. 14-15. Senator Levin noted Secretary Rice’s above op-ed article. *Id.* para. 19. Senator Levin stated that Secretary Rice was “responsible for her own distortions and exaggerations”, and that she “exaggerated and distorted the facts and the intelligence provided to her to help convince the American public of the need to go to war.” *Id.* paras. 6, 33.

knowingly and willfully making false, fictitious and fraudulent statements in violation of 18 U.S.C. § 1001(a)(2), and the jury convicted him on one of those counts.<sup>304</sup>

Guilty knowledge can be proven by circumstantial evidence. In *United States v. O'Brien* the court upheld the false statement convictions of the president of a company and stated:

[The defendant] submits that the prosecution introduced no direct evidence that he, himself, committed fraud, aided or abetted another's fraud, or induced a third person to commit fraud. [The court] agree[s]: the government produced nothing in the way of a confession or any other single piece of evidence that, standing alone, might irrefutably prove [the defendant's] guilty knowledge. But a court will not automatically invalidate a conviction merely because the jury based its finding of scienter [guilty knowledge], and, hence, its verdict, on circumstantial evidence alone. Guilty knowledge, like specific intent, seldom can be established by direct evidence. This principle has particular significance in respect to fraud crimes which, by their very nature, often yield little in the way of direct proof. Unless an accomplice turns, a miscreant confesses, or a suspect is snared by his own [speech], prosecutions for fraud must routinely be mounted on the basis of indirect evidence.

This approach to proving guilty knowledge is neither legally problematic nor even controversial. The law is long since settled that the prosecution may prove its case without direct evidence of a defendant's guilty knowledge so long as the array of circumstantial evidence possesses persuasive power.... [A jury can] infer [a defendant's] guilty knowledge ...<sup>305</sup>

Circumstantial evidence is defined as “[e]vidence based on inference and not on personal knowledge and observation.”<sup>306</sup> An inference is a “conclusion reached by considering other facts and deducing a logical consequence from them.”<sup>307</sup>

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<sup>304</sup> See Indictment, Counts Two-Three, at 15-17, *supra* note 32; Leonnig & Goldstein, *supra* note 34.

<sup>305</sup> *United States v. O'Brien*, 14 F.3d 703, 704-05, 706-07 (1st Cir. 1994) (internal citations omitted). The statutes violated in that case were not 18 U.S.C. §§ 1001, 371, but other statutes. See also *United States v. Nivica*, 887 F.2d 1110, 1113 (1st Cir. 1989) (“In a fraud case, the government need not produce direct proof of defendant's scienter in order to convict. Circumstantial proof of criminal intent/guilty knowledge will suffice.... There is no pat formula for such proof; factual circumstances may signal fraudulent intent in ways as diverse as the manifestations of fraud itself.”); *United States v. Swinton*, 75 F.3d 374, 380 (8th Cir. 1996) (“Intent to defraud need not be shown by direct evidence; rather, it may be inferred from all the facts and circumstances surrounding the defendant's actions.”); *United States v. Snelling*, 862 F.2d 150, 154 (8th Cir. 1988) (“Fraudulent intent is often not able to be proven by direct evidence but may be inferred by a series of acts and relevant circumstances.”)

<sup>306</sup> BLACK'S LAW DICTIONARY 595 (8th ed. 2004).

<sup>307</sup> *Id.* at 793.

Since possession of recently stolen property is a circumstance from which a jury may reasonably draw the inference and find that the person in possession knew that it was stolen property,<sup>308</sup> then the fact that a person prepares, rewrites, and possesses a statement that is false and fraudulent, and submits it as his or her own is also a circumstance from which a jury could infer that the person who submitted the statement knew that it was false and fraudulent.

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

Concerning President Bush's knowledge that his uranium claims in both his war resolution report to Congress and his State of the Union Address were false and fraudulent, there is the circumstantial evidence of all the warnings that the American Intelligence Community issued that discredited the uranium claim.<sup>309</sup>

There is also the circumstantial evidence that the CIA had sent an earlier memo directly to National Security Advisor Rice telling her that the evidence on the uranium claim was weak and that the CIA differed with the British on the issue, and she as a member of President Bush's innermost circle spent hours with him preparing his 2003 State of the Union Address that contained a uranium claim similar to the claim that the CIA told her was based on weak evidence. Also there is the circumstantial evidence of the White House pictures showing how President Bush was in charge of his State of the Union Address, reviewing it, sketching notes in drafts of it, rewriting it, and "giv[ing] his speech writing team a few points after revising" it.<sup>310</sup>

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<sup>308</sup> See *United States v. Triplett*, 104 F.3d 1074, 1078 (8th Cir. 1997).

<sup>309</sup> See *supra* pp. 39-41.

<sup>310</sup> See *supra* pp. 36-37.

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

Under Rule 404(b) of the Federal Rules of Evidence:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of *motive*, opportunity, *intent*, *preparation*, *plan*, *knowledge*, identity, or *absence of mistake or accident*<sup>311</sup>  
...

As observed in *United States v. DeSalvo*, under Rule 404(b) when a defendant is charged with making false claims a court can allow evidence of other "misrepresent[ations]" "as circumstantial ... similar acts evidence to show that she knew the claims she submitted ... were false."<sup>312</sup>

President Bush's fifty three other misleading public statements show a pattern of misconduct that constitutes circumstantial evidence from which it can be inferred that he knew that his uranium statements were false and fraudulent, that he had a plan to make false and fraudulent statements, and that said statements were not a result of a mistake. A few mistakes are plausible but not fifty-five.

There is also the circumstantial evidence of the motive. President Bush needed to scare Congress to thwart any Congressional efforts to delay the start of the war. There is the circumstantial evidence of the Downing Street Minutes of July 23, 2002, which allegedly state: "Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy."<sup>313</sup>

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<sup>311</sup> FED. R. EVID. 404(b) (emphasis added).

<sup>312</sup> *United States v. DeSalvo*, 41 F.3d 505, 507-08, 510 (9th Cir. 1994).

<sup>313</sup> HOUSE JUD. COMM. MIN. REPORT: BUSH V. CONST., *supra* note 102, at 20.

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

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

[The] appellants had a duty to make sure [the submissions they gave to the government were true]... Checking available physical data ... was the obvious means to accomplish this end. The appellants' avowed failure to do so evidenced a *reckless disregard of the truth, with a conscious purpose to avoid learning the truth*. Such action is sufficient to show that a false statement was made knowingly or willfully.<sup>314</sup>

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

A conviction under § 1001 requires proof that a defendant had the specific intent to make a false or fraudulent statement deliberately or at least with *reckless disregard of the truth and with the purpose to avoid learning the truth*. In this case, [the defendant] claims that he never read the ... form [that he submitted], and the prosecution introduced no evidence that showed that [the defendant] knew what he was signing. Instead, the district court concluded that, by signing the form without reading it, [the defendant] acted with “*a reckless disregard of the truth and with the purpose to avoid learning the truth.*”

This Court finds no error in the district court's judgment. *Reckless indifference* has been held sufficient to satisfy § 1001's scienter requirement so that a defendant who *deliberately avoids learning the truth* cannot circumvent criminal sanctions... [A] defendant who deliberately avoids reading the form he is signing cannot avoid criminal sanctions for any false statements contained therein. Any other holding would write § 1001 completely out of existence.<sup>315</sup>

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

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<sup>314</sup> United States v. White, 765 F.2d 1469, 1481-82 (11th Cir. 1985) (emphasis added).

<sup>315</sup> United States v. Puente, 982 F.2d 156, 159 (5th Cir. 1993) (citations and citation marks omitted, emphasis added).

We note ... that the element of guilty knowledge in a criminal case may be supplied by inferences drawn from evidence suggesting that a defendant *deliberately blinded himself to what would otherwise have been obvious*. In this case, the stage was appropriately set for such an inference: although appellant claimed a lack of knowledge, the facts, taken in the light most hospitable to the government, strongly suggested that, given the widespread nature of the fraud and the importance to the corporation of the extra revenues generated by it, *only a conscious course of calculated ignorance could have kept the company president from knowing the truth*.<sup>316</sup>

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

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

To satisfy the element of materiality, it is enough if the statements had a natural tendency to influence, or be capable of affecting or influencing a government function.... The Government does not have to show actual reliance on the false statements. A statement can be material even if it is ignored or never read by the agency receiving the misstatement. False statements must simply have the capacity to impair or pervert the functioning of a government agency.<sup>317</sup>

In the view of the Vice President's Office, President Bush's uranium claim concerned a "matter of signal importance: the rationale for the war in Iraq."<sup>318</sup> President Bush's uranium statements certainly had the capacity to influence at least some of the 535 Members of Congress regarding their various Congressional functions including whether to vote for House Concurrent Resolution 2, and or whether to repeal the war resolution or modify it to delay the start of the war such as specifically stating that President Bush could not start the war until after UN weapons inspectors finished their inspections.

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<sup>316</sup> United States v. O'Brien, 14 F.3d 703, 707-08 (1st Cir. 1994) (citations and citation marks omitted, emphasis added).

<sup>317</sup> United States v. Calhoon, 97 F.3d 518, 530 (11th Cir. 1996) (citations and citation marks omitted); *see also* United States v. Puente, 982 F.2d 156, 159 (5th Cir. 1993) (to be material, statement need only be capable of influencing a government function and it need not even be read by the government).

<sup>318</sup> Gov't Response Re: Discovery, *supra* note 43, at 18.

More specifically, President Bush's uranium claims were material to the two grounds for the war resolution and whether Congress believed that such grounds were still valid. The war resolution authorized President Bush to engage the American military to (1) defend the national security against the threat posed by Iraq and (2) enforce UN Security Council resolutions.<sup>319</sup> The UN Security Council subsequently passed S.C. Res. 1441 that demanded that Iraq disclose all its programs to develop chemical, biological, and nuclear weapons, and under the resolution inspectors could destroy said weapons and related items.<sup>320</sup>

Concerning the first ground, President Bush's uranium claims were capable of deceiving Congress into believing that even though UN weapons inspectors had found no nuclear weapons in Iraq nor evidence that Iraq had revived its nuclear weapons program, Iraq did in fact have such weapons and such a program since it had secretly sought the fuel for a nuclear weapon, and thus the United States needed to defend its national security by invading Iraq to prevent Iraq's use of those nuclear weapons. Concerning the second ground, President Bush's uranium claims were capable of deceiving Congress into believing that Iraq not only had a current nuclear weapons program but Iraq violated S.C. Res. 1441 by not disclosing to the UN its attempts to acquire uranium under that program, and therefore the United States needed to invade Iraq to enforce the part of S.C. Res. 1441 concerning finding and destroying nuclear weapons and related items.

The portion of President Bush's false claim in his State of the Union Address about when Iraq sought the uranium certainly had the capacity to influence and scare Congress. President Bush's statement that Iraq *recently* sought uranium was material because it would be one thing if Iraq had nuclear weapons in the past and showed a track record like other nations of having but

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<sup>319</sup> Iraq War Res. of 2002, *supra* note 4, Pub. L. No. 107-243, § 3(a), 116 Stat. 1501.

<sup>320</sup> S.C. Res. 1441, *supra* note 236, ¶¶ 3, 7.

not using nuclear weapons but it would be another thing if Iraq just got the nuclear fuel and could now at any moment launch a nuclear weapon or secretly give it to terrorists.

President Bush's uranium claims were material to Congressional thinking. As noted earlier, the report *Iraq On The Record* states that the uranium claim was "one of few new pieces of intelligence" and the Administration offered it "as proof that Iraq had reconstituted its nuclear weapons program."<sup>321</sup> In their ability to evoke horror, nuclear weapons are in a class by themselves and thus the Administration's uranium claims had a large impact on congressional perceptions about the threat posed by Iraq.<sup>322</sup> As mentioned in *George W. Bush versus the U.S. Constitution*, according to a press report the White House believed that everyone "understood the connection between uranium and the bomb", and according to that press report the uranium claim "was the easiest way for the Bush administration to raise alarms."<sup>323</sup>

It must be noted that § 1001 does not prohibit all false and fraudulent statements to Congress but covers only certain matters such as (1) statements in "a *document* required by law, rule, or regulation to be submitted to the Congress" or (2) statements submitted as part of or applicable to "any investigation or *review*, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate."<sup>324</sup> President Bush's war resolution report and his State of the Union Address satisfy both criteria.<sup>325</sup>

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<sup>321</sup> HOUSE GOV'T REFORM COMM. MIN. REPORT: IRAQ, *supra* note 1, at 13.

<sup>322</sup> *See Id.* at 7-8.

<sup>323</sup> HOUSE JUD. COMM. MIN. REPORT: BUSH V. CONST., *supra* note 102, at 29.

<sup>324</sup> 18 U.S.C. § 1001(c) (2000) (emphasis added).

<sup>325</sup> Section 1001 covers the statement that President Bush made in his war resolution report since the report was a document that the Congressional war resolution required the President to submit to Congress. The war resolution states that the "President shall, at least once every 60 days, submit to the Congress a report on matters relevant to this joint resolution." Iraq War Res. of 2002, *supra* note 4, Pub. L. No. 107-243, § 4(a), 116 Stat. 1501. President Bush in his said report actually stated that "[p]ursuant to ... Public Law 107-243 [the war resolution] ... I am providing a report prepared by my Administration on matters relevant to that Resolution." HOUSE DOC. NO.

Thus there is at the very least substantial and credible information that President Bush made false and fraudulent statements to Congress, and thus committed the impeachable offenses set forth in Articles I and II of violating the criminal statute 18 U.S.C. § 1001(a)(2).<sup>326</sup>

*B. Article III Against President Bush and Article I Against Vice President Cheney: Conspiring to Defraud Congress, Violation of 18 U.S.C. § 371*

The above mentioned uranium claims that President Bush, National Security Advisor Rice, Secretary Powell, and Secretary Rumsfeld made in January 2003 were false because Iraq had made no such attempt to acquire uranium.<sup>327</sup> President Bush's claim that the British

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108-23, *supra* note 72, at 1. President Bush's war resolution report to Congress is labeled House Document 108-23. *Id.*, Cover.

Section 1001 covers President Bush's war resolution report also because it was applicable to an "investigation or review, conducted pursuant to the authority of a... committee ... of the Congress." 18 U.S.C. § 1001(c) (2000) (emphasis added). As noted above, the war resolution stated that the President must submit to the Congress a "report on matters relevant to this joint resolution." As noted on the front page of House Document 108-23, which is the war resolution report, that report was "[r]eferred to the Committee on International Relations." HOUSE DOC. NO. 108-23, *supra* Cover. The obvious purpose for the law requiring such a report is for Congress and the said committee to review that report, and obviously Congress and the said committee have the authority to review said matters.

Similarly § 1001 covers the statement that President Bush made in his State of the Union Address because the law required President Bush to submit such an Address to Congress, the Address was a document, and also it was submitted for Congressional review. The Constitution states that the President "shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient." U.S. CONST. art. II, § 3. President Bush's 2003 State of the Union Address is a document and is labeled House Document 108-1. HOUSE DOC. NO. 108-1, *supra* note 69, Cover. That document is not a transcript of a speech since at the end it contains a name, address and date: "GEORGE W. BUSH. THE WHITE HOUSE, January 28, 2003." *Id.* at 11. As shown by a picture on the White House website, President Bush upon his arrival at the House Chamber handed a copy of his 2003 State of the Union Address to Vice President Cheney and Speaker of the House Dennis Hastert. State of the Union 2003, The White House (2003).\*

Section 1001 covers President Bush's State of the Union Address also because it was submitted for Congressional review. As noted above, the Constitution directs the President to "give to the Congress [i]nformation o[n] the State of the Union" and make "recommend[at]ions" for Congress's "[c]onsideration". U.S. CONST. art. II, § 3. Concerning the 2003 State of the Union Address, Congress had passed a resolution which "provid[ed] for a joint session of Congress to receive a message from the President on the state of the Union." H.R. Con. 12, 108th Cong. (2003).\* As noted on the front page of House Document 108-1, which is the 2003 State of the Union Address, that document was "referred to the Committee on the Whole House." HOUSE DOC. NO. 108-1, *supra* Cover. The obvious purpose for such laws is for Congress to review and consider such information, recommendations and messages, and obviously Congress (the Committee on the Whole House) has the authority to review said matters.

<sup>326</sup> See *infra* pp. 84-89.

<sup>327</sup> See reports of the presidential commission, ISG, and UN's IAEA, *supra* pp. 38, 51, 52-53.

government had learned that Iraq had recently sought uranium from Africa was also false because that government did not learn or even allege that such seeking of uranium was recent.<sup>328</sup>

Also, the uranium claims that they made were fraudulent, as defined above,<sup>329</sup> because when they made those claims they did not disclose the warnings discrediting those claims issued by members of America's Intelligence Community, including the CIA, INR, and NIC.<sup>330</sup>

The statements that Vice President Cheney in July 2003 directed Libby to make to the press to support President Bush's uranium claim were fraudulent because when he directed Libby to disclose the NIE's statement that Iraq had tried to procure uranium he did not direct Libby to disclose the Intelligence Community's warnings that discredited the uranium claims, including the INR's dissent in the NIE, the NIC's later warning that the Niger uranium claim was baseless, the NIC's later memorandum stating that it was highly unlikely that Niger sold uranium to Iraq in recent years, and the memorandum to Vice President Cheney stating that the CIA had expressed serious concerns about the Niger uranium claim prior to the publication of the NIE.<sup>331</sup>

Concerning said uranium claims, which are the basis for Article III against President Bush and Article I against Vice President Cheney,<sup>332</sup> the criminal statute 18 U.S.C. § 371 states:

If two or more persons conspire either to commit any offense against the United States, or to *defraud the United States*, or any agency thereof in *any manner or for any purpose*, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.<sup>333</sup>

This statute does not restrict its application to documents that are required to be given to Congress, does not require proof that any statements made to effect the object of the conspiracy

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<sup>328</sup> See *supra* note 122.

<sup>329</sup> See *supra* pp. 57-58.

<sup>330</sup> See *supra* pp. 39-41.

<sup>331</sup> See *supra* p. 41.

<sup>332</sup> See *infra* pp. 89-99.

<sup>333</sup> 18 U.S.C. § 371 (2000) (emphasis added).

were made directly to Congress or were submitted as part of a formal review, and does not require proof that the conspiracy was successful.

Also, the Supreme Court in *Dennis v. United States* stated that the type of conduct that is prohibited by § 371 “is not confined to fraud as that term has been defined in the common law .... [but] reaches any conspiracy for the purpose of *impairing, obstructing, or defeating the lawful function* of any department of government.”<sup>334</sup>

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

To conspire to defraud the United States means primarily to cheat the government out of property or money, but it also means to *interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest*. It is not necessary that the government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane, or the overreaching of those charged with carrying out the governmental intention.<sup>335</sup>

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

A conspiracy to defraud under § 371 embraces any conspiracy for the purpose of *impairing, obstructing, or defeating the lawful function* of any department of government.... [I]t is well established that the term “defraud” as used in § 371 is interpreted much more broadly than when it is used in the mail and wire fraud statutes, and that this provision not only reaches schemes which deprive the government of money or property, but also is designed to protect the integrity of the United States and its agencies. Thus, this section covers acts that *interfere with or obstruct one of the United States’ lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest*, even if the Government is not subjected to property or pecuniary loss by the fraud. Moreover, so long as *deceitful or dishonest means are employed to obstruct governmental functions*, the impairment need not involve the violation of a separate statute. We thus agree with the Ninth Circuit’s summary of the four elements of a § 371 conspiracy-to-defraud offense: The government need only show (1) that defendant entered into an agreement (2) to *obstruct a lawful function* of the government (3) by *deceitful or dishonest means* and (4) at least one overt act in furtherance of the conspiracy.<sup>336</sup>

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<sup>334</sup> *Dennis v. United States*, 384 U.S. 855, 861 (1966) (citations and citation marks omitted, emphasis added).

<sup>335</sup> *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924) (emphasis added).

<sup>336</sup> *United States v. Ballistrea*, 101 F.3d 827, 831-32 (2d Cir. 1996) (internal citations and citation marks omitted, emphasis added).

In the present case, there is strong circumstantial evidence that President Bush, Vice President Cheney, Secretary Rumsfeld, Secretary Powell, and National Security Advisor Rice, on or about January 2003 entered into an agreement to impair, obstruct and interfere with the lawful functions of Congress to evaluate whether it should repeal or modify the war resolution. That agreement included using the deceitful and dishonest means of making or directing others to make false and or fraudulent public statements which said or in effect said that Iraq had sought the uranium fuel for a nuclear bomb, and or which said or in effect said that Iraq had not disclosed that fact to the UN and thus had not complied with S.C. Res. 1441 that required such a disclosure. The purpose of said statements was to scare Congress so that it would not repeal or modify the war resolution. In January 2003, four of the above officials committed five overt acts in furtherance of that conspiracy by making the above five false and fraudulent uranium claims. Also in July 2003 Vice President Cheney directed Libby to provide information to the press to support President Bush's uranium claim.

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

The government is not required to prove that an express agreement existed. Rather the government need only establish a *tacit understanding* between the parties, and this may be shown wholly through the *circumstantial evidence* of the defendant's actions. Because the nature of conspiracy entails secrecy, the *agreement* and members' participation in it must often be established by way of *inference from the surrounding circumstances*.<sup>337</sup>

The court in *United States v. Coveney* stated: "Proof of a specific agreement is not necessary; the jury may infer an agreement from a *concert of action*."<sup>338</sup>

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<sup>337</sup> *United States v. Cabrera*, 116 F.3d 1243, 1245 (8th Cir. 1997) (internal citation and citation marks omitted, emphasis added). *See also* *United States v. Hartley*, 678 F.2d 961, 972 (11th Cir. 1982) ("There is no requirement ... that the [conspiracy] agreement be express. In fact, the secret nature of a conspiracy in most instances requires the trier of fact to infer its existence from the surrounding circumstances.")

<sup>338</sup> *United States v. Coveney*, 995 F.2d 578, 594 (5th Cir. 1993) (emphasis added).

The concert of the five false and fraudulent statements that Iraq attempted to acquire uranium that President Bush, Secretary Rumsfeld, Secretary Powell, and National Security Advisor Rice made within the short time span of January 20 to January 29, 2003, and Vice President Cheney's instruction to Libby in July 2003 that he provide information to the press in support of President Bush's uranium claim, is sufficient proof that they had at least a tacit agreement to mislead Congress into believing that Iraq attempted to acquire uranium.

There is not only the circumstantial evidence that their statements were similar in nature but they also had a close working relationship as the key members of the NSC. The NSC is the "President's principal *forum* for considering national security and foreign policy matters .... [, and] serves as the President's principal arm for *coordinating* these policies."<sup>339</sup> Rice and the White House Chief of Staff Card were not only members or attendees at meetings of the NSC but were also members of WHIG, a group that sought to persuade Congress of the need to invade Iraq and whose other members included Calio who was President Bush's personal lobbyist to Congress.<sup>340</sup> WHIG met weekly in the White House Situation Room.<sup>341</sup> According to Woodward, WHIG "coordinat[ed] the daily message on Iraq and the 'echo' – the effort to reinforce the president's themes and arguments with statements and media appearances by administration officials."<sup>342</sup>

According to Woodward in January 2003 "Card's White House Iraq Group was *planning* a big rollout of speeches and documents to counter Saddam and the growing international antiwar movement."<sup>343</sup>

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<sup>339</sup> National Security Council, *supra* note 159 (emphasis added).

<sup>340</sup> See HOUSE JUD. COMM. MIN. REPORT: BUSH V. CONST., *supra* note 102, at 27; WOODWARD, *supra* note 218, at 168.

<sup>341</sup> HOUSE JUD. COMM. MIN. REPORT: BUSH V. CONST., *supra* note 102, at 27.

<sup>342</sup> WOODWARD, *supra* note 218, at 172.

<sup>343</sup> *Id.* at 286 (emphasis added).

Thus it certainly appears that the NSC and WHIG jointly planned and coordinated the above five uranium claims that the Bush Administration made in January 2003. The NSC and WHIG certainly were forums and groups capable of tacit agreements and understandings.

Also the members of a conspiracy need not reach the tacit understanding all at the same time. In *Cabrera* the court stated that the government need only prove that the defendant “knew of the agreement, and that the defendant knowingly became a part of the conspiracy.”<sup>344</sup> The court stated that the government “must establish some degree of knowing involvement and cooperation” but “[o]nce a conspiracy is established, even slight evidence connecting a defendant to the conspiracy may be sufficient to prove the defendant’s involvement.”<sup>345</sup> The court stated that a defendant’s “participation in [a conspiracy] must often be established by way of inference from the surrounding circumstances.”<sup>346</sup>

Regarding the element of impairing or obstructing a governmental function, the agreement sought to impair and obstruct the function of Congress to determine whether to modify or repeal the war resolution which had authorized President Bush to use military force against Iraq.<sup>347</sup> Under the War Powers Resolution of 1973, President Bush could not use military force against Iraq for more than ninety days without a specific war resolution in effect or a Congressional declaration of war.<sup>348</sup> Furthermore, without a war resolution or declaration of war, Congress could at anytime direct President Bush to remove American troops from Iraq.<sup>349</sup> Since Congress could order President Bush to remove the troops at anytime, the conspiracy was

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<sup>344</sup> United States v. *Cabrera*, 116 F.3d 1243, 1244 (8th Cir. 1997) (citations and citation marks omitted).

<sup>345</sup> *Id.* at 1244-45 (internal citations and citation marks omitted).

<sup>346</sup> *Id.* at 1245 (citation and citation marks omitted).

<sup>347</sup> Iraq War Res. of 2002, *supra* note 4, Pub. L. No. 107-243, 116 Stat. 1498.

<sup>348</sup> 50 U.S.C. § 1544(b) (2000).

<sup>349</sup> 50 U.S.C. § 1544(c) (2000).

broad and sought to impair the function of Congress to repeal or modify the war resolution in general including both prior to and after the start of the war.

The Administration's five pre war uranium claims in January 2003 could obstruct the functions of Congress regarding whether to repeal or modify the war resolution for the same reasons that President Bush's two uranium claims were material: the claims were capable of deceiving Congress into believing that the grounds for the war resolution were still valid despite the fact that UN weapons inspectors had not found any nuclear weapons or a nuclear weapons program in Iraq.<sup>350</sup> Even after the start of the war, the Administration up until early July 2003 still covertly pushed the uranium claim as a "rationale for the war" when Vice President Cheney directed Libby to provide information to the press to support the uranium claim that President Bush had made in his State of the Union Address. Vice President Cheney's action that he committed after the start of the war was not only an attempt to justify the prewar uranium claims but was capable of still scaring Congress into believing that Iraq had undisclosed nuclear weapons somewhere so that Congress would not modify the war resolution, such as setting a schedule for troop withdrawals, nor use the War Powers Resolution of 1973 to direct President Bush to actually remove the troops.

The Administration's uranium claims certainly were capable of obstructing the functions of Congress. As mentioned earlier, the Administration's uranium claim was "one of few new pieces of intelligence, [and] this claim was *repeated multiple times* by Administration officials as *proof* that Iraq had reconstituted its nuclear weapons program."<sup>351</sup> Nuclear weapons evoke horror more so than other weapons and thus the Administration's uranium claims had a large

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<sup>350</sup> See *supra* p. 65.

<sup>351</sup> HOUSE GOV'T REFORM COMM. MIN. REPORT: IRAQ, *supra* note 1, at 13 (emphasis added).

impact on congressional perceptions about the threat posed by Iraq.<sup>352</sup> The White House believed that everyone understood the connection between uranium and the bomb.<sup>353</sup> The uranium claim was the easiest way for the Administration to raise alarms.<sup>354</sup>

Regarding the element of deceitful and dishonest means, the agreement sought to impair and obstruct Congress' said functions by the deceitful and dishonest means of making or directing others to make false and or fraudulent public statements that Iraq had sought the uranium fuel for nuclear weapons, and not disclosing nor directing others to disclose the warnings discrediting the uranium claim issued by members of the American Intelligence Community, including the CIA, INR, and NIC.<sup>355</sup>

The deceitful and dishonest means that the said officials used were not always direct statements to Congress but included public statements that Members of Congress would obviously listen to or read. Unlike the criminal statute 18 U.S.C. § 1001, which has some

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<sup>352</sup> See *Id.* at 7-8.

<sup>353</sup> HOUSE JUD. COMM. MIN. REPORT: BUSH V. CONST., *supra* note 102, at 29.

<sup>354</sup> *Id.*

<sup>355</sup> See *supra* pp. 39-41.

The Administration will no doubt contend that the functions of Congress were not impaired because Congress had the same information on the uranium claim's weakness as did the Administration. However, Congress did not have the same information. As mentioned earlier, intelligence officials told some Members of Congress about the weakness of the claim and the unreliability of the reporting on it. See *supra* pp. 27-28. However, such information would have been given to only certain Members of Congress on a few committees with oversight responsibilities who could not release that information to all 535 Members of Congress.

Also, although it might be assumed that all Members of Congress received copies of or had access to the October 1, 2002 NIE containing the opinion of the State Department's INR that the claims about Iraq's attempt to acquire uranium were highly dubious, it cannot be assumed that the Members of Congress interested in the uranium issue read the INR's dissenting opinion. The INR's dissent was placed in an annex concerning another issue (aluminum tubes) that was sixty pages away from the main part of the NIE containing the assertion that Iraq had sought uranium from African countries. SENATE INTEL. COMM. REPORT: IRAQ, *supra* note 105, at 52-54. Thus while it may be assumed that all Members of Congress had copies of or access to the NIE, it is not assumed that those interested in the uranium issue read the entire annex concerning the aluminum issue, which contained the INR's dissent. Also the NIE only contained the INR's dissenting opinion and did not contain the views of intelligence officials expressed to the intelligence committees referred to in the above paragraph. The October 2002 NIE did not contain the opinion of CIA Director Tenet who told the White House on October 6, 2002 that President Bush should not make the uranium claim because according to his analysts the reporting on the claim was weak. *Id.* at 56.

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

restrictions on its application regarding Congress, the conspiracy statute has no exceptions to its application and includes any dishonest means of impairing or obstructing Congress' function.

Concerning the last element of an overt act, there was not one act but the five overt acts of making the five said statements. Also there is the overt act of Vice President Cheney of directing Libby to provide information to the press to support President Bush's uranium claim.<sup>356</sup>

Obviously the crime of conspiracy does not require proof that the conspiracy was successful but only requires proof of an agreement and one overt act in furtherance of the conspiracy agreement.<sup>357</sup> Thus it is not necessary to prove that the Administration's uranium claims actually impaired a function of Congress or had an effect on Congress.

However, it is only human to wonder if the truth had been told prior to the war, whether Congress might have restricted President Bush's power to commence the war against Iraq at will and required him to at least await the conclusion of the UN weapons inspections. A survey released by *ABC News* on January 5, 2007 reveals that the war resolution would not have passed in the Senate if its members knew then what they know now.<sup>358</sup> President Bush rushed us into the war on March 19, 2003 rather than address the concerns raised in Congressman Waxman's March 17 letter and rather than allow the UN weapon inspectors to finish their inspections, the results of which would have contradicted the Administration's claim that Iraq was a nuclear threat and would have caused further Congressional efforts to stop or delay the war.

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<sup>356</sup> Furthermore, even if Vice President Cheney's actions of trying to support President Bush's prewar uranium claim did not effect the overall object of the conspiracy, such actions did constitute knowing involvement and cooperation in the conspiracy, and thus violated the conspiracy statute. *See United States v. Cabrera*, 116 F.3d 1243, 1244-45 (8th Cir. 1997). All the members of a conspiracy need not commit an overt act to effect the object of the conspiracy for there to be a crime since only one member of the conspiracy has to commit such an act. 18 U.S.C. § 371 (2000).

<sup>357</sup> Section 371 and § 1001 are similar in that neither requires proof of success. Section 1001 only requires that the statement was material (capable of influencing a government decision or function) and § 371 only requires one overt act to effect the object of the conspiracy and does not require proof of any actual impairment of a government function.

<sup>358</sup> Jake Tapper, *Senate Regrets the Vote to Enter Iraq, ABC News Survey Shows that Knowing Then What It Knows Now, 2002 Senate Would Vote Against Giving President War Powers*, ABC NEWS, Jan. 5, 2007.\* For the statements or views of specific Senators, *see Iraq Vote: What the Senators Said*, ABC NEWS, Jan. 5, 2007.\*

Although President Bush and said officials will make the claim that they had no knowledge that the statements they made, or directed others to make, were false and fraudulent, that claim will fail. As noted earlier, guilty knowledge is usually proven not by direct evidence but by inference from circumstantial evidence.<sup>359</sup> The numerous warnings discrediting the uranium claim that the American Intelligence Community issued to the White House constitute overwhelming circumstantial evidence from which it can be inferred that President Bush and said officials knew that their uranium claims were false and fraudulent.<sup>360</sup>

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

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<sup>359</sup> See *supra* pp. 59-62.

<sup>360</sup> See *supra* pp. 39-41.

Regarding the fifth member of the conspiracy, his chief of staff was in charge at the White House for producing papers that supported the claim that Iraq had weapons of mass destruction and he pushed his chief of staff to reveal to the press a document that supported the uranium claim that President Bush had made in his State of the Union Address. Vice President Cheney pushed his chief of staff to do this even though the Vice President's Office had produced a memorandum that noted that the CIA prior to the publication of that supporting document had expressed serious concerns about the uranium claim.

There is also the circumstantial evidence of their other 232 misleading public statements. President Bush made fifty-five misleading statements, Vice President Cheney made fifty-one misleading statements, Secretary Rumsfeld made fifty-two misleading statements, Secretary Powell made fifty misleading statements, and National Security Advisor Rice made twenty-nine misleading statements concerning the threat posed by Iraq for a total of 237 misleading statements.<sup>361</sup> As noted earlier, evidence of other crimes, wrongs, or acts is admissible at a trial to prove "intent, preparation, plan, knowledge, ... or absence of mistake or accident."<sup>362</sup>

There is also the circumstantial evidence of the Downing Street Minutes. A few mistakes are plausible but 237 misleading statements are the best examples of how, as claimed in the Downing Street Minutes, "the intelligence and facts were being fixed around the policy."<sup>363</sup>

Thus there is at the very least substantial and credible information that President Bush and Vice President Cheney conspired to defraud Congress and thereby committed the impeachable offenses set forth in Article III against President Bush and Article I against Vice President Cheney of violating the criminal statute 18 U.S.C. § 371.<sup>364</sup>

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<sup>361</sup> HOUSE GOV'T REFORM COMM. MIN. REPORT: IRAQ, *supra* note 1, at 25-29.

<sup>362</sup> FED. R. EVID. 404(b).

<sup>363</sup> HOUSE JUD. COMM. MIN. REPORT: BUSH V. CONST., *supra* note 102, at 20.

<sup>364</sup> *See infra* pp. 89-99. A similar article of impeachment could be drafted against Secretary Rice.

#### IV. CONCLUSION

An analysis of the public record, including Congressional investigative reports and documents, reveals that President Bush committed the impeachable offenses set forth in the subsequent Articles Of Impeachment of making false and fraudulent statements to Congress in violation of the criminal statute 18 U.S.C. § 1001, and that he and Vice President Cheney committed the impeachable offenses set forth in the subsequent Articles of conspiring to defraud Congress in violation of the criminal statute 18 U.S.C. § 371.<sup>365</sup>

In response to public criticism about President Bush's use of signing statements (statements in which when he signed a law he claimed that he had the authority to disregard that law or portions of it), the American Bar Association created a task force, which subsequently issued a report that stated that the use of such statements "poses a serious threat to the rule of law."<sup>366</sup> Surely President Bush's false and fraudulent statements to Congress that actually violated the law also pose a threat to the rule of law.

Thus Congress should commence impeachment proceedings against President Bush and Vice President Cheney. This report is similar to a report that the House Judiciary Committee might issue recommending impeachment based on the commission of the above crimes.<sup>367</sup> As shown by this report, the record is strong enough to start an impeachment trial immediately. The documents, reports and other matters mentioned in the footnotes in this report would constitute an exhibit list, and the names mentioned in this report would constitute the witness list.

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<sup>365</sup> See *infra* pp. 84-99.

<sup>366</sup> AMERICAN BAR ASSOCIATION TASK FORCE ON PRESIDENTIAL SIGNING STATEMENTS AND THE SEPARATION OF POWERS DOCTRINE, REPORT 2-3, 20 (2006).\* That report also mentioned the signing statements of previous Presidents and condemned the practice. *Id.* at 7-14, 20. The ABA adopted a resolution based on the report. American Bar Association, News Release, ABA Adopts New Policy on Presidential Signing Statements, Attorney Client Privilege and Inspector General for the Federal Judiciary (Aug. 8 2006).\*

<sup>367</sup> See the reports by the House Judiciary Committee recommending the impeachment of President Clinton, H.R. REP. NO. 105-830 (1998), and the impeachment of President Nixon, H.R. REP. NO. 93-1305 (1974), mentioned in notes 17 and 18.

Using the URL addresses at the end of this report can produce practically all the cited reports and documents. The only significant document that is not cited in a government report is the January 2003 NIC memo delivered to the White House, and that memo needs to be subpoenaed. Impeachment in the House and conviction in the Senate could take only a few weeks.

Some might contend that impeachment in the House is impractical since conviction in the Senate requires a vote of two thirds present (67 Senators) and even if all the Democrats voted to convict not enough of the 49 Republicans would join the Democrats to reach that total. However, once the trial starts with the introduction of the above exhibits and the testimony of Libby, Schmall, Card, Calio, Tenet, Hadley, Scheer, and ElBaradei, then the stage would be set for the testimony of Rice, Powell and Rumsfeld,<sup>368</sup> who would in light of the above criminal case provide such incriminating and politically damaging testimony that enough Senators required for a conviction would start feeling a need to exercise their right to political survival. Build a strong case and the Republicans would have no choice but to convict or be labeled enablers of President Bush and face their own removal from office at a later time.

Many Republican Senators have already distanced themselves from President Bush and his war. The above-mentioned *ABC News* survey released in January 2007 reveals that at least nine Republican Senators who voted for the war resolution would have voted against the resolution if they knew then what they know now, or believe that there would not have been a vote on the resolution if they knew then what they know now.<sup>369</sup> Twenty-three Republican Senators refused to answer the hypothetical concerning what their vote would have been if they

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<sup>368</sup> The Senate rules provide for subpoenas for witnesses to testify at impeachment trials. See RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS, *supra* note 26, Rule VI, at 4, and form of a subpoena, at 11. Also, as noted earlier, those rules do not prohibit hearsay. See *Id.*, Rule VII.

<sup>369</sup> Tapper, *supra* note 358; *Iraq Vote: What the Senators Said*, *supra* note 358, at 1.

knew then what they know now, or refused to respond to the survey.<sup>370</sup> President Bush's disastrous war in Iraq was a decisive issue in the recent elections in which many Republicans lost their jobs and will continue to be a decisive issue in the next elections. A poll taken in January 2007 revealed that 58% of those polled wished that the Bush presidency was simply over.<sup>371</sup> Senators who enable President Bush to remain in office would at their next election likely face the same sentiment about whether they should remain in office.

Thus a Member of Congress should file the resolutions and articles of impeachment at the end of this report or similar resolutions and articles. As mentioned above, this report is similar to a report that the House Judiciary Committee might issue recommending impeachment based on the commission of the above crimes. There is no need for an investigation.

Also, under House rules citizens can petition Members of Congress to file said or similar resolutions and articles of impeachment.<sup>372</sup> A Member of Congress could file such resolutions and articles of impeachment even if he or she opposes impeachment or has not made up their mind, and could simply at the end of the impeachment resolutions state that they are submitted "by request."<sup>373</sup> A draft of such a petition is at the end of this report.<sup>374</sup>

If the new Congress hesitates at the present time to commence impeachment proceedings then at the very least Congressional committees such as the Senate Judiciary Committee, the House Judiciary Committee, and the House Committee on Oversight and Government Reform should conduct oversight hearings on the false and fraudulent uranium claims that the Administration made to Congress and also whether the Justice Department changed or limited

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<sup>370</sup> *Iraq Vote: What the Senators Said*, *supra* note 358, at 2-3.

<sup>371</sup> See Brian Braiker, *A Sorry State*, NEWSWEEK, Jan. 27, 2007.\* As mentioned earlier, a poll taken in October 2006 revealed that 51% of those polled believed that Congress should make impeachment a priority of some type, either top or lower. See Mabry, *supra* note 25.

<sup>372</sup> See *supra* pp. 4-5.

<sup>373</sup> See *supra* p. 5. The impeachment resolutions at the end of this report state: "By Request". See *infra* pp. 93, 99.

<sup>374</sup> See *infra* pp. 82-83.

Fitzgerald's jurisdiction or was involved in the drafting of Fitzgerald's response to Congressman Hinchey. As mentioned earlier, the Justice Department has fired federal prosecutors apparently because they investigated Republicans too aggressively, which caused the Senate Judiciary Committee and a House Judiciary subcommittee to conduct hearings.<sup>375</sup>

The committees and individual Members of Congress should also request the Justice Department to appoint an outside Special Counsel pursuant to the Department's current regulations.<sup>376</sup> The said committees or Members could not only submit reports to the Justice Department in support of such requests but could also submit drafts of an indictment similar to the Articles of Impeachment at the end of this report. Since Libby was held accountable for being dishonest with federal agents and a grand jury,<sup>377</sup> then President Bush and Vice President Cheney should be held accountable for what Wilson charged, which, as Fitzgerald himself described it, was that President Bush and Vice President Cheney were "*dishonest* and that the *country was misled into war.*"<sup>378</sup> Certainly lying to Congress about war is as serious as lying to federal agents and a grand jury about a leak that apparently was not even a crime.

If Congress does not take action then soon there might be not only a war in Iraq but also a war in Iran. President Bush and Vice President Cheney might start the next war not by lying to Congress but by ignoring Congress.

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<sup>375</sup> See *supra* p. 13, including note 60.

<sup>376</sup> See 28 C.F.R. §§ 600.1-.3 (2006)\* (requiring the Justice Department to appoint an outside Special Counsel when the Department has a conflict of interest and it is in the public interest to do so), and 28 C.F.R. § 45.2(a) (2006)\* (generally requiring the disqualification of Justice Department employees from investigations when they have a personal or political conflict of interest). The Attorney General can stop a Special Counsel from pursuing a matter and can fire a Special Counsel. 28 C.F.R. § 600.7(b),(d).\* Special Counsels are not independent counsels that judges appointed under the lapsed Independent Counsel Reauthorization Act, 28 U.S.C. §§ 591-599 (1994).\* The author in a lengthy memorandum to the Justice Department dated November 25, 2006 requested the Justice Department to appoint an outside Special Counsel to investigate the above matter but the Justice Department in a letter dated February 7, 2007 told the author to contact the Federal Bureau of Investigation.

<sup>377</sup> The jury convicted Libby of obstructing justice by misleading and deceiving the grand jury (Count One), making false and fraudulent statements to federal agents (Count Two), and making false statements under oath to the grand jury (Counts Four & Five). See Indictment, *supra* note 32; Leonnig & Goldstein, *supra* note 34.

<sup>378</sup> Libby Trans. #1, *supra* note 53, at 80 (emphasis added).

## PETITION TO

\_\_\_\_\_  
(Name of Member)

### MEMBER OF THE HOUSE OF REPRESENTATIVES

#### TO ENDORSE AND DELIVER TO THE CLERK OF THE HOUSE RESOLUTIONS SETTING FORTH ARTICLES OF IMPEACHMENT AGAINST PRESIDENT GEORGE W. BUSH AND VICE PRESIDENT RICHARD CHENEY

**WHEREAS**, as set forth in the attached Articles of Impeachment (Articles I and II against President George W. Bush), President George W. Bush made false and fraudulent statements to Congress that Iraq had sought uranium for a nuclear weapon, and thereby he violated 18 U.S.C. § 1001;

**WHEREAS**, as set forth in the attached Articles of Impeachment (Article III against President George W. Bush and Article I against Vice President Richard Cheney), President George W. Bush and Vice President Richard Cheney conspired to defraud Congress into believing that Iraq had sought uranium for a nuclear weapon, and thereby they violated 18 U.S.C. § 371;

**WHEREAS**, by committing said crimes President George W. Bush and Vice President Richard Cheney committed impeachable offenses;

**WHEREAS**, as set forth in *House Practice*, Chapter 27 § 6, “[m]ethods of setting an impeachment in motion in the House include ... [c]harges initiated by a petition from one or more citizens and referred to committee”;

**WHEREAS**, as set forth in the *Rules of the House of Representatives*, Rule XII, clause 3, “[i]f a Member ... has a petition ... to present, he shall endorse his name, deliver it to the Clerk, and may specify the reference or disposition to be made thereof”;

**WHEREAS**, as set forth in *House Practice*, Chapter 6 § 6, “[p]etitions ... addressed to the House are delivered to the Clerk and may be presented by the Speaker as well as by any Member .... [and a] Member may present a petition from the citizens of a State other than his own”;

**WHEREAS**, as set forth in the *Rules of the House of Representatives*, Rule XII, clause 7, “[w]hen a bill or resolution is introduced ‘by request,’ those words shall be entered on the Journal and printed in the Congressional Record”;

**WHEREAS**, as set forth in *House Practice*, Chapter 6 § 6, the “House does not permit the names of citizens requesting the introduction of a bill to be printed in the *Congressional Record*, but the rules do permit the words ‘by request’ to be entered on the Journal and printed in the *Record* .... following the name of the primary sponsor or the names of some or all of the initial cosponsors”;

**WHEREAS**, as set forth in *House Practice*, Chapter 6 § 6, a “Member may introduce a bill even though he is personally opposed to its passage”;

**THEREFORE**, the undersigned citizen[s] of the United States **petitions** the above Member of the House of Representatives to endorse and deliver to the Clerk of the House of Representatives the attached Resolutions setting forth said Articles of Impeachment against President George W. Bush and Vice President Richard Cheney.

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Date

H.RES. \_\_\_\_\_

RESOLUTION IMPEACHING GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, FOR MAKING FALSE AND FRAUDULENT STATEMENTS TO CONGRESS AND CONSPIRING TO DEFRAUD CONGRESS

Resolved, that George W. Bush, President of the United States, is impeached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the United States Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and of the people of the United States of America, against George W. Bush, President of the United States of America, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I  
(War Resolution Report to Congress)

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has willfully committed the high crime and misdemeanor of making a false and fraudulent statement to the Congress of the United States in violation of the criminal felony statute 18 U.S.C. § 1001(a)(2), in that:

1. The Congress of the United States in 1973 passed a resolution entitled the War Powers Resolution, 50 U.S.C. §§ 1541-1548, which in § 1544(b) states that the President of the United States cannot engage the Armed Forces of the United States in hostilities for more than ninety days without a declaration of war or specific statutory authorization, and in § 1544(c) states that at any time that United States Armed Forces are engaged in hostilities outside the territory of the

United States without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

2. The Congress of the United States in October 2002 passed a resolution entitled the Authorization for Use of Military Force Against Iraq Resolution of 2002, Public Law 107-243, 116 Stat. 1498 (the war resolution), which 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.”

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

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

5. The United Nations weapons inspectors did not find any evidence that Iraq had revived its nuclear weapons program and did not find any prohibited nuclear activities.

6. Prior to the war in Iraq that George W. Bush as the President of the United States initiated on or about March 19, 2003 pursuant to the said war resolution, George W. Bush as

President on or about January 20, 2003 in the District of Columbia submitted to Congress 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. Section 4 of Public Law 107-243 (the war resolution) that had authorized George W. Bush as President to use military force in Iraq also required George W. 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 chemical, biological, and nuclear weapons, George W. Bush knowingly and willfully made the materially false, fictitious, and fraudulent statement that said declaration by Iraq "failed to deal with issues which have arisen since 1998, including ... attempts to acquire uranium and the means to enrich it."

9. Said statement was a false and fictitious statement because Iraq had made no such attempts to acquire uranium, and George W. 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 George W. Bush knew but failed to disclose in said statement that members of

the American Intelligence Community had issued warnings that discredited the claim that Iraq had attempted to acquire uranium, such as the warnings that the uranium claim was highly dubious, baseless, and that President Bush should not make the claim because it was weak.

11. Said statement was a materially false, fictitious and fraudulent statement because it was capable of deceiving 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.

12. Wherefore, George W. Bush, by such conduct committed the high crime and misdemeanor of making a false and fraudulent statement to Congress in violation of 18 U.S.C. § 1001(a)(2), and thus warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States.

## ARTICLE II (State of the Union Report to Congress)

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has willfully committed the high crime and misdemeanor of making a false and fraudulent statement to the Congress of the United States in violation of the criminal felony statute 18 U.S.C. § 1001(a)(2), in that:

Paragraphs 1-5 of Article I are hereby incorporated by reference as paragraphs 1-5 of this Article.

6. Prior to the war in Iraq that George W. Bush as the President of the United States initiated on or about March 19, 2003 pursuant to the said war resolution, George W. Bush as President on or about January 28, 2003 in the District of Columbia submitted to Congress 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. Article II, § 3 of the United States Constitution required George W. 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 George W. Bush knowingly and willfully made the materially false, fictitious, and fraudulent statement that “[t]he British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.”

9. Said statement 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 Hussein had recently sought significant quantities of uranium from Africa, and said statement was false and fictitious because the British government never even alleged that any such seeking of uranium was recent, and George W. 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 George W. 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 sought uranium, such as the warnings that the uranium claim was highly dubious, baseless, and that President Bush should not make the claim because it was weak.

11. Said statement was a materially false, fictitious and fraudulent statement because it was capable of deceiving 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.

12. Wherefore, George W. Bush, by such conduct committed the high crime and misdemeanor of making a false and fraudulent statement to Congress in violation of 18 U.S.C. § 1001(a)(2), and thus warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States.

### ARTICLE III (Conspiracy to Defraud Congress)

In his conduct while President of the United States, George W. Bush, in violation of his constitutional oath to faithfully execute the office of President of the United States and to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has willfully committed the high crime and misdemeanor of conspiring to defraud the Congress of the United States in violation of the criminal felony statute 18 U.S.C. § 371, in that:

1-5. Paragraphs 1-5 of Article I are hereby incorporated by reference as paragraphs 1-5 of this Article.

6. Prior to the war in Iraq that George W. Bush as the President of the United States initiated on or about March 19, 2003 pursuant to the said war resolution, George W. Bush while President of the United States and various co conspirators, including the Vice President Richard Cheney, the then National Security Advisor Condoleezza Rice, the then Secretary of State Colin Powell, and the then Secretary of Defense Donald Rumsfeld, entered into an agreement on or about January 2003 in the District of Columbia to defraud the United States by impairing, obstructing, and interfering with the lawful functions of the Congress to consider legislation that would repeal or modify the said war resolution that had given George W. Bush as President the power to engage the Armed Forces of the United States in a war against Iraq.

7. Said agreement included using the deceitful and dishonest means of making, or directing others to make, false and or fraudulent public statements which said or in effect said that Iraq had sought the uranium fuel for a nuclear bomb, and or which said or in effect said that Iraq had not disclosed that fact to the United Nations and therefore had not complied with S.C. Res. 1441 that required Iraq to disclose all aspects of its programs to develop nuclear weapons; and the purpose 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 valid.

8. George W. Bush and other co conspirators committed overt acts to effect the object of that conspiracy and said acts included the following:

(a) President George W. Bush on January 20, 2003 in his war resolution report to Congress entitled *Communication from the President of the United States Transmitting a Report*

*on Matters Relevant to the Authorization for Use of Military Force Against Iraq Resolution of 2002, Public Law 107-243* (subsequently labeled House Document 108-23) stated that Iraq's December 7, 2002 disclosure to the United Nations (which was supposed to disclose all aspects of Iraq's programs to develop nuclear weapons) "failed to deal with issues which have arisen since 1998, including ... attempts to acquire uranium and the means to enrich it."

(b) President George W. Bush on January 28, 2003 in his State of the Union report to Congress entitled *Message from the President of the United States Transmitting a Report on the State of the Union* (subsequently labeled House Document 108-1) stated:

The [United Nations] International Atomic Energy Agency [IAEA] confirmed in the 1990s that Saddam Hussein had an advanced nuclear weapons development program, had a design for a nuclear weapon, and was working on five different methods of enriching uranium for a bomb. The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.

(c) The then National Security Advisor Condoleezza 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 Colin Powell on January 26, 2003 in a speech at the World Economic Forum stated: "Why is Iraq still trying to procure uranium and the special equipment needed to transform it into material for nuclear weapons?"

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

(f) Vice President Richard Cheney's Chief of Staff, I. Lewis Libby, was in charge at the White House for producing papers that supported the claim that Iraq had weapons of mass destruction and Richard Cheney on or about July 7, 2003 communicated to Libby that he thought that it was 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 George W. Bush had made in his State of the Union report, and Richard Cheney instructed Libby to disclose that information to a reporter Judith Miller, and thus Libby on July 8, 2003 met with Miller and told her that the NIE stated that Iraq had vigorously tried to procure uranium; and furthermore Richard Cheney on or about July 12, 2003 directed Libby to again tell the press that the NIE stated that Iraq had tried to procure uranium.

9. Said statement of George W. Bush that the "British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa" was a false 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, and said statement was also false because the British government never alleged that any such seeking of uranium was recent, and George W. Bush made said statement knowing that it was false.

10. All said statements of George W. Bush, Condoleezza Rice, Colin Powell, and Donald Rumsfeld about Iraq attempting to acquire, seeking, making efforts to get, and trying to procure uranium were false because Iraq had made no such attempts or efforts to acquire uranium, and they made said statements knowing that said statements were false.

11. All said statements of George W. Bush, Condoleezza Rice, Colin Powell, and Donald Rumsfeld about Iraq attempting to acquire, seeking, making efforts to get, and trying to procure uranium were also fraudulent statements because they knew but failed to disclose in said

statements that members of the American Intelligence Community had issued warnings that discredited such uranium claims, such as the warnings that such claims were highly dubious, baseless, and that President Bush should not make the claim because it was weak.

12. Said statements that Richard Cheney in July 2003 directed Libby to make to the press about Iraq trying to procure uranium as mentioned in the October 2002 NIE were fraudulent statements because Richard Cheney knew but did not direct Libby to disclose that the NIE also contained a dissenting opinion stating that the uranium claim was highly dubious, did not direct Libby to 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 direct Libby to 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 direct Libby to disclose that the Vice President's Office had produced a memorandum dated June 9, 2003 that noted that the CIA prior to the publication of the NIE had expressed serious concerns about the uranium claim, and did not direct Libby to disclose that members of the American Intelligence Community had issued other warnings that discredited the uranium claim, such as the warning that President Bush should not make the claim because it was weak.

13. Wherefore, George W. Bush, by such conduct committed the high crime and misdemeanor of conspiring to defraud Congress in violation of 18 U.S.C. § 371, and thus warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States.

ENDORSED

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By Request

H.RES. \_\_\_\_\_

RESOLUTION IMPEACHING RICHARD CHENEY, VICE PRESIDENT OF THE  
UNITED STATES, FOR CONSPIRING TO DEFRAUD CONGRESS

Resolved, that Richard Cheney, Vice President of the United States, is impeached for a high crime and misdemeanor, and that the following article of impeachment be exhibited to the United States Senate:

Article of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and of the people of the United States of America, against Richard Cheney, Vice President of the United States of America, in maintenance and support of its impeachment against him for a high crime and misdemeanor.

ARTICLE I  
(Conspiracy to Defraud Congress)

In his conduct while Vice President of the United States, Richard Cheney, in violation of his constitutional oath to faithfully execute the office of Vice President of the United States and to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has willfully committed the high crime and misdemeanor of conspiring to defraud the Congress of the United States in violation of the criminal felony statute 18 U.S.C. § 371, in that:

1. The Congress of the United States in 1973 passed a resolution entitled the War Powers Resolution, 50 U.S.C. §§ 1541-1548, which in § 1544(b) states that the President of the United States cannot engage the Armed Forces of the United States in hostilities for more than ninety days without a declaration of war or specific statutory authorization, and in § 1544(c) states that at any time that United States Armed Forces are engaged in hostilities outside the territory of the

United States without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

2. The Congress of the United States in October 2002 passed a resolution entitled the Authorization for Use of Military Force Against Iraq Resolution of 2002, Public Law 107-243, 116 Stat. 1498 (the war resolution), which 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.”

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

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

5. The United Nations weapons inspectors did not find any evidence that Iraq had revived its nuclear weapons program and did not find any prohibited nuclear activities.

6. Prior to the war in Iraq that George W. Bush as the President of the United States initiated on or about March 19, 2003 pursuant to the said war resolution, George W. Bush while

President of the United States and various co conspirators, including the Vice President Richard Cheney, the then National Security Advisor Condoleezza Rice, the then Secretary of State Colin Powell, and the then Secretary of Defense Donald Rumsfeld, entered into an agreement on or about January 2003 in the District of Columbia to defraud the United States by impairing, obstructing, and interfering with the lawful functions of the Congress to consider legislation that would repeal or modify the said war resolution that had given George W. Bush as President the power to engage the Armed Forces of the United States in a war against Iraq.

7. Said agreement included using the deceitful and dishonest means of making, or directing others to make, false and or fraudulent public statements which said or in effect said that Iraq had sought the uranium fuel for a nuclear bomb, and or which said or in effect said that Iraq had not disclosed that fact to the United Nations and therefore had not complied with S.C. Res. 1441 that required Iraq to disclose all aspects of its programs to develop nuclear weapons; and the purpose 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 valid.

8. George W. Bush and other co conspirators committed overt acts to effect the object of that conspiracy and said acts included the following:

(a) President George W. Bush on January 20, 2003 in his war resolution report to Congress entitled *Communication from the President of the United States Transmitting a Report on Matters Relevant to the Authorization for Use of Military Force Against Iraq Resolution of 2002, Public Law 107-243* (subsequently labeled House Document 108-23) stated that Iraq's December 7, 2002 disclosure to the United Nations (which was supposed to disclose all aspects

of Iraq's programs to develop nuclear weapons) "failed to deal with issues which have arisen since 1998, including ... attempts to acquire uranium and the means to enrich it."

(b) President George W. Bush on January 28, 2003 in his State of the Union report to Congress entitled *Message from the President of the United States Transmitting a Report on the State of the Union* (subsequently labeled House Document 108-1) stated:

The [United Nations] International Atomic Energy Agency [IAEA] confirmed in the 1990s that Saddam Hussein had an advanced nuclear weapons development program, had a design for a nuclear weapon, and was working on five different methods of enriching uranium for a bomb. The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.

(c) The then National Security Advisor Condoleezza 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 Colin Powell on January 26, 2003 in a speech at the World Economic Forum stated: "Why is Iraq still trying to procure uranium and the special equipment needed to transform it into material for nuclear weapons?"

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

(f) Vice President Richard Cheney's Chief of Staff, I. Lewis Libby, was in charge at the White House for producing papers that supported the claim that Iraq had weapons of mass destruction and Richard Cheney on or about July 7, 2003 communicated to Libby that he thought

that it was 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 George W. Bush had made in his State of the Union report, and Richard Cheney instructed Libby to disclose that information to a reporter Judith Miller, and thus Libby on July 8, 2003 met with Miller and told her that the NIE stated that Iraq had vigorously tried to procure uranium; and furthermore Richard Cheney on or about July 12, 2003 directed Libby to again tell the press that the NIE stated that Iraq had tried to procure uranium.

9. Said statement of George W. Bush that the “British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa” was a false 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, and said statement was also false because the British government never alleged that any such seeking of uranium was recent, and George W. Bush made said statement knowing that it was false.

10. All said statements of George W. Bush, Condoleezza Rice, Colin Powell, and Donald Rumsfeld about Iraq attempting to acquire, seeking, making efforts to get, and trying to procure uranium were false because Iraq had made no such attempts or efforts to acquire uranium, and they made said statements knowing that said statements were false.

11. All said statements of George W. Bush, Condoleezza Rice, Colin Powell, and Donald Rumsfeld about Iraq attempting to acquire, seeking, making efforts to get, and trying to procure uranium were also fraudulent statements because they knew but failed to disclose in said statements that members of the American Intelligence Community had issued warnings that discredited such uranium claims, such as the warnings that such claims were highly dubious, baseless, and that President Bush should not make the claim because it was weak.

12. Said statements that Richard Cheney in July 2003 directed Libby to make to the press about Iraq trying to procure uranium as mentioned in the October 2002 NIE were fraudulent statements because Richard Cheney knew but did not direct Libby to disclose that the NIE also contained a dissenting opinion stating that the uranium claim was highly dubious, did not direct Libby to 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 direct Libby to 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 direct Libby to disclose that the Vice President's Office had produced a memorandum dated June 9, 2003 that noted that the CIA prior to the publication of the NIE had expressed serious concerns about the uranium claim, and did not direct Libby to disclose that members of the American Intelligence Community had issued other warnings that discredited the uranium claim, such as the warning that President Bush should not make the claim because it was weak.

13. Wherefore, Richard Cheney, by such conduct committed the high crime and misdemeanor of conspiring to defraud Congress in violation of 18 U.S.C. § 371, and thus warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States.

ENDORSED

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By Request

## URL ADDRESSES

The following are the URL addresses for the matters in the corresponding footnotes. Books such as *George W. Bush versus the U.S. Constitution* (HOUSE JUD. COMM. MIN. REPORT: BUSH V. CONST.) (footnote 102), *The One Percent Doctrine* (footnote 188), and *Plan Of Attack* (footnote 218) do not have URL addresses. (Note: URL addresses that end a sentence have a period at the end of the sentence that is not part of the URL address.)

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