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# EXECUTIVE ACCOUNTABILITY ACT OF 2009

## HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

ON

**H.R. 743**

JULY 27, 2009

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JULY 27, 2009

# EXECUTIVE ACCOUNTABILITY ACT OF 2009

**MONDAY, JULY 27, 2009**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 3 p.m., in room 2141, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Jackson Lee, Gohmert, Poe, and Lungren.

Staff Present: (Majority) Bobby Vassar, Subcommittee Chief Counsel; Jesselyn McCurdy, Counsel; Joe Graupensperger, Counsel; Veronica Eligan, Professional Staff Member; (Minority) Caroline Lynch, Counsel; and Robert Woldt, FBI Detailee.

Mr. SCOTT. The Subcommittee will now come to order.

I am pleased to welcome you today to the hearing before the Subcommittee on Crime, Terrorism, and Homeland Security on the Executive Accountability Act of 2009.

There are no more important communications from the executive branch to Congress than those which urge sending our troops into harm's way. Our soldiers and their families sacrifice in so many ways, some making the ultimate sacrifice in order to protect us. We owe them our best judgment based on the best, most complete, and most accurate information as to when sending them into battle is absolutely just and necessary.

The President, Senators and Members of the House take an oath to defend the Constitution, as do our soldiers; and in so doing we pledge to respect the limitations of each branch's role established by the Constitution's systems of checks and balances. Our branches of national government are separate but interdependent; and candid communications between them is critical for our citizens to be effectively and honestly represented, particularly on an issue such as military action.

Today, we will examine legislation focused on ensuring that Congress can rely on the truthfulness of statements made by the President and executive branch officials about when it is necessary to use our military. The bill before us seeks to amend the Federal Code to specifically prohibit false statements that are made knowingly and willfully by the President or other executive branch officials for the purpose of influencing a Member of Congress to authorize the use of the Armed Forces of the United States.

We have a number of things to keep in mind as we discuss this legislation, such as the historical background of communications between the executive branch and Congress with respect to the need for war, the nature of the relationship between the branches of the national government, and our desire to encourage, not discourage, open and truthful dialogue between them.

When Congress amended the False Statements Act in 1996 to ensure that certain misrepresentations to Congress were prohibited, we were concerned about going too far and discouraging people from engaging in advocacy and furnishing information to Congress. I want to hear from our witnesses about whether this legislation raises any similar concerns.

We also need to consider the extent to which current law covers the types of misleading communications that have prompted this legislation and whether the provisions of current statutes may not apply in this context because, for example, particular communications may not be under oath or pursuing a Committee's inquiry. I hope our witnesses will be able to address this issue, too.

Our first witness will be the author of the bill, Representative Walter Jones from North Carolina, who will discuss his motivations for introducing the legislation. We will then hear from a panel of witnesses who will discuss the historical context for the legislation, any constitutional issues that may be involved, and the text of the bill.

[The bill, H.R. 743, follows:]

I

111TH CONGRESS
1ST SESSION

# H. R. 743

To prohibit the President or any other executive branch official from knowingly and willfully misleading the Congress or the people of the United States, for the purpose of gaining support for the use of the Armed Forces of the United States.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2009

Mr. JONES (for himself and Mr. ABERCROMBIE) introduced the following bill; which was referred to the Committee on the Judiciary

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# A BILL

To prohibit the President or any other executive branch official from knowingly and willfully misleading the Congress or the people of the United States, for the purpose of gaining support for the use of the Armed Forces of the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Executive Accountability Act of 2009".

**SEC. 2. FINDINGS.**

The Congress finds the following:

(1) In 1770, John Adams wrote in "Argument in Defense of Soldier in the Boston Massacre Trials": "Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence.".

(2) In 1787, John Jay wrote in "The Federalist No. 4": "There are pretended as well as just causes of war.".

(3) In 1865, Abraham Lincoln said: "I have faith in the people . . . the danger is, they are misled. Let them know the truth and the country is safe.".

**SEC. 3. PROHIBITION AGAINST EXECUTIVE BRANCH MISREPRESENTATIONS MADE FOR THE PURPOSE OF GAINING SUPPORT FOR THE USE OF THE ARMED FORCES OF THE UNITED STATES.**

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following:

**"§ 1041. Executive branch misrepresentations for the purpose of gaining support for the use of the Armed Forces of the United States**

"(a) Whoever, being a covered official, for the purpose of influencing a member of the Congress to authorize the use of the Armed Forces 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, imprisoned not more than 10 years, or both.

"(b) In subsection (a), the term 'covered official' means the President or an officer or employee of the executive branch of the Government.".

(b) SUSPENSION OF LIMITATIONS DURING PRESIDENTIAL TERM.—Chapter 213 of such title is amended by adding at the end the following:

**"§ 3301. Suspension of limitations during Presidential term**

"The running of any statute of limitations applicable to an offense under section 1041 shall be suspended until the end of the term of the President in office at the time the offense is committed.".

(c) CLERICAL AMENDMENTS.—

Mr. SCOTT. It is now my pleasure to recognize the Ranking Member pro tem, the gentleman from Texas, Mr. Poe, who is representing the Ranking Member Mr. Gohmert, at least temporarily. Mr. Poe.

Mr. POE. Thank you, Mr. Chairman.

Glad to see my good friend, Mr. Jones, here today. Thank you.

We are here today to discuss H.R. 743, the Executive Accountability Act of 2009, which proposes to criminalize false statements, false documents, and concealments by executive branch officials whose purpose it was to influence Members of Congress to deploy United States' Armed Forces.

On the face of it, H.R. 743 seems like a relatively straightforward proposition. Congress asks for truthful information and intelligence before we commit troops or anyone who intentionally misrepresents that information is subject to criminal penalties.

The reality of this statement is, however, a lot more problematic. If the 8 years since 9/11 has taught us anything, it should be that the world of foreign intelligence—the truth is not only complicated but sometimes subject to a lot of political gamesmanship. The question is, should it be a crime if the intelligence turns out to be incorrect? That is one of the questions we are here today to resolve, one way or the other.

At times, both Congress and the executive branch are forced to act on the best intelligence available at the time. These are judgment calls that will be hindered if Congress continues to criminalize them in the name of politics.

There is absolutely nothing wrong with expecting the executive branch, starting with the White House and working down throughout the intelligence community, the entire executive branch, to provide Congress and the American public with truthful, accurate information justifying the commitment of United States troops and the loss of American lives anywhere in the world. Similarly, there is nothing wrong with Congress exercising oversight to review intelligence failures. After all, that is our obligation under the law.

We in Congress do have an obligation, however, not to Monday morning quarterback those decisions for political reasons simply because we have the benefit of hindsight. By continuing to politicize these decisions and sometimes actually attempting to criminalize them, we are creating an environment where not only is it likely that less information will flow from the executive branch to Congress but one where future Presidents are going to increasingly be inclined to act unilaterally when deploying our Armed Forces, and that is an unfortunate outlook.

We also must remember that Title 18, section 1001, already makes it a Federal crime to provide false statements or documents to Congress using the exact language that is proposed in H.R. 743; and a Federal perjury charge would often exist in situations where a witness testifies before Congress. I am looking forward to seeing what the difference is in section 1001 and H.R. 743 from Mr. Jones.

The last thing we need to do is further proliferize and criminalize the Federal Criminal Code. As we discussed last week, there are 4,450 Federal crimes now in the United States, with the Congress adding 50 more every year.

As a Member of Congress, I want to promote an environment where there is an open, honest dialogue—with emphasis on the honest dialogue—with the White House and the intelligence community in making those decisions. I still am open-minded regarding H.R. 743.

That said, I thank all of our panelists for being here; and I look forward to hearing the thoughts on this bill and some of the questions answered.

I yield back my time, Mr. Chairman.

Mr. SCOTT. Thank you, Mr. Poe.

We have two panels of witnesses who will help us consider this bill. First, we will hear from the author of the legislation, a senior Member of the United States House of Representatives who serves on the Armed Services and Financial Services Committees and is Chair of the Military Personnel—excuse me, Ranking Member of the Military Personnel Oversight and Investigation Subcommittee. And has been a Member of the House since 1994?

Mr. JONES. Yes, sir.

Mr. SCOTT. 1994. So we look forward to hearing from our witness today. Representative Jones.

**TESTIMONY OF THE HONORABLE WALTER B. JONES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA**

Mr. JONES. Mr. Chairman, thank you very much; and, Ranking Member Poe, thank you as well. I am pleased and honored that I would have the opportunity to testify today on H.R. 743, the Executive Accountability Act.

I would like to begin by reading an excerpt from an essay that appeared in *Time Magazine* in 2006. The essay is authored by Lieutenant General Greg Newbold and is entitled “Why Iraq Was a Mistake.” He states:

“From 2000 until 2002, I was a Marine Corps Lieutenant General and Director of Operations for the Joint Chiefs of Staff. After 9/11, I was a witness and therefore a party to the actions that led us to the invasion of Iraq—an unnecessary war. Inside the military family, I made no secret of my view that zealots’ rationale for war made no sense. And I think I was outspoken enough to make those senior to me uncomfortable. But I regret now that I did not more openly challenge those who were determined to invade a country whose actions were peripheral to the real threat—al-Qaeda. I retired from the military 4 months before the invasion, in part because of my opposition to those who had used 9/11’s tragedy to hijack our national security policy.”

Later in the essay Lieutenant General Newbold cites, and I quote, “the distortion, the distortion of intelligence in the buildup to the war.”

Chairman, I would like to submit a copy of his article for the record.

Mr. SCOTT. Without objection.

[The information referred to follows:]

TIME

FROM THE MAGAZINE

Sunday, Apr. 09, 2006

# Why Iraq Was a Mistake

**A military insider sounds off against the war and the "zealots" who pushed it**

By LIEUT. GENERAL GREG NEWBOLD (RET.)

Two senior military officers are known to have challenged Defense Secretary Donald Rumsfeld on the planning of the Iraq war. Army General Eric Shinseki publicly dissented and found himself marginalized. Marine Lieut. General Greg Newbold, the Pentagon's top operations officer, voiced his objections internally and then retired, in part out of opposition to the war. Here, for the first time, Newbold goes public with a full-throated critique:

In 1971, the rock group The Who released the antiwar anthem Won't Get Fooled Again. To most in my generation, the song conveyed a sense of betrayal by the nation's leaders, who had led our country into a costly and unnecessary war in Vietnam. To those of us who were truly counterculture--who became career members of the military during those rough times--the song conveyed a very different message. To us, its lyrics evoked a feeling that we must never again stand by quietly while those ignorant of and casual about war lead us into another one and then mismanage the conduct of it. Never again, we thought, would our military's senior leaders remain silent as American troops were marched off to an ill-considered engagement. It's 35 years later, and the judgment is in: the Who had it wrong. We have been fooled again.

From 2000 until October 2002, I was a Marine Corps lieutenant general and director of operations for the Joint Chiefs of Staff. After 9/11, I was a witness and therefore a party to the actions that led us to the invasion of Iraq--an unnecessary war. Inside the military family, I made no secret of my view that the zealots' rationale for war made no sense. And I think I was outspoken enough to make those senior to me uncomfortable. But I now regret that I did not more openly challenge those who were determined to invade a country whose actions were peripheral to the real threat--al-Qaeda. I retired from the military four months before the invasion, in part because of my opposition to those who had used 9/11's tragedy to hijack our security policy. Until now, I have resisted speaking out in public. I've been silent long enough.

I am driven to action now by the missteps and misjudgments of the White House and the Pentagon, and by my many painful visits to our military hospitals. In those places, I have been both inspired and shaken by the broken bodies but unbroken spirits of soldiers, Marines and corpsmen returning from this war. The cost of flawed leadership continues to be paid in blood. The willingness of our forces to shoulder such a load should make it a sacred obligation for civilian and military leaders to get our defense policy right. They must be absolutely sure that the commitment is for a cause as honorable as the sacrifice.

With the encouragement of some still in positions of military leadership, I offer a challenge to those still in uniform: a leader's responsibility is to give voice to those who can't--or don't have the opportunity to--speak. Enlisted members of the armed forces swear their oath to those appointed over them; an officer swears an oath not to a person but to the Constitution. The distinction is important.

Before the antiwar banners start to unfurl, however, let me make clear--I am not opposed to war. I would gladly have traded my general's stars for a captain's bars to lead our troops into Afghanistan to destroy the Taliban and al-Qaeda. And while I don't accept the stated rationale for invading Iraq, my view--at the moment--is that a precipitous withdrawal would be a mistake. It would send a signal, heard around the world, that would reinforce the jihadists' message that America can be defeated, and thus increase the chances of future conflicts. If, however, the Iraqis prove unable to govern, and there is open civil war, then I am prepared to change my position.

I will admit my own prejudice: my deep affection and respect are for those who volunteer to serve our nation and therefore shoulder, in those thin ranks, the nation's most sacred obligation of citizenship. To those of you who don't know, our country has never been served by a more competent and professional military. For that reason, Secretary of State Condoleezza Rice's recent statement that "we" made the "right strategic decisions" but made thousands of "tactical errors" is an outrage. It reflects an effort to obscure gross errors in strategy by shifting the blame for failure to those who have been resolute in fighting. The truth is, our forces are successful in spite of the strategic guidance they receive, not because of it.

What we are living with now is the consequences of successive policy failures. Some of the missteps include: the distortion of intelligence in the buildup to the war, McNamara-like micromanagement that kept our forces from having enough resources to do the job, the failure to retain and reconstitute the Iraqi military in time to help quell civil disorder, the initial denial that an insurgency was the heart of the opposition to occupation, alienation of allies who could have helped in a more robust way to rebuild Iraq, and the continuing failure of the other agencies of our government to commit assets to the same degree as the Defense Department. My sincere view is that the commitment of our forces to this fight was done with a casualness and swagger that are the special province of those who have never had to execute these missions--or bury the results.

Flaws in our civilians are one thing; the failure of the Pentagon's military leaders is quite another. Those are men who know the hard consequences of war but, with few exceptions, acted timidly when their voices urgently needed to be heard. When they knew the plan was flawed, saw intelligence distorted to justify a rationale for war, or witnessed arrogant micromanagement that at times crippled the military's effectiveness, many leaders who wore the uniform chose inaction. A few of the most senior officers actually supported the logic for war. Others were simply intimidated, while still others must have believed that the principle of obedience does not allow for respectful dissent. The consequence of the military's quiescence was that a fundamentally flawed plan was executed for an invented war, while pursuing the real enemy, al-Qaeda, became a secondary effort.

There have been exceptions, albeit uncommon, to the rule of silence among military leaders. Former Army Chief of Staff General Shinseki, when challenged to offer his professional opinion during prewar congressional testimony, suggested that more troops might be needed for the invasion's aftermath. The Secretary and Deputy Secretary of Defense castigated him in public and marginalized him in his remaining months in his post. Army General John Abizaid, head of Central Command, has been forceful in his views with appointed officials on strategy and micromanagement of the fight in Iraq--often with success. Marine Commandant General Mike Hagee steadfastly challenged plans to underfund, understaff and underequip his service as the Corps has struggled to sustain its fighting capability.

To be sure, the Bush Administration and senior military officials are not alone in their culpability. Members of Congress--from both parties--defaulted in fulfilling their constitutional responsibility for oversight. Many in the media saw the warning signs and heard cautionary tales before the invasion from wise observers like former Central Command chiefs Joe Hoar and Tony Zinni but gave insufficient weight to their views. These are the same news organizations that now downplay both the heroic and the constructive in Iraq.

So what is to be done? We need fresh ideas and fresh faces. That means, as a first step, replacing Rumsfeld and many others unwilling to fundamentally change their approach. The troops in the Middle East have performed their duty. Now we need people in Washington who can construct a unified strategy worthy of them. It is time to send a signal to our nation, our forces and the world that we are uncompromising on our security but are prepared to rethink how we achieve it. It is time for senior military leaders to discard caution in expressing their views and ensure that the President hears them clearly. And that we won't be fooled again.

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Mr. JONES. After reading this article I met with Lieutenant General Newbold and at least 18 other key figures, including Senator Chuck Hagel, a Member of the Senate Intelligence Committee, to discuss the justification for the war in Iraq. After these meetings, I was convinced the war in Iraq was not justified. Chairman, I would like to submit the names of those that I met with for the record.

Mr. SCOTT. Without objection so ordered.

[The information referred to follows:]

Submission of Walter B. Jones (NC-3): Meeting Participants
**Hearing on H.R. 743, the Executive Accountability Act**
House Subcommittee on Crime, Terrorism, and Homeland Security
July 27, 2009

Warren Strobel
Knight Ridder News

John Landay
Knight Ridder News

General Anthony Zinni, USMC (Ret)
Former Deputy Commander in Chief, U.S. Central Command

Chris Farrell
Judicial Watch

Lieutenant Colonel Karen Kwiatkowski, USAF (Ret)

Jim Bamford
Author, *A Pretext for War: 9/11, Iraq, and the Abuse of America's Intelligence Agencies* (2004)

Colonel Larry Wilkerson, USA (Ret)
Former Chief of Staff to Sec. of State Colin Powell

Senator Chuck Hagel
Member, Senate Committee on Intelligence

Thomas Gimble
Former Acting Inspector General, DOD

John Crane
Assistant Inspector General, Office of Communications and Legislative Affairs, DOD

Shell Young
Former Deputy IG for Intelligence, DOD

Wanda Scott
Former Assistant IG for Readiness and Operations Support, DOD

Paul Pillar
Former CIA National Intelligence Officer for the Near East and South Asia

Duncan Hunter
Member of Congress

Lieutenant General Greg Newbold, USMC (Ret)
Former Director of Operations for the Joint Chiefs of Staff

Sibel Edmonds
National Association of Security Whistleblowers

Eric Rosenbach
Former Staff for Senator Chuck Hagel

General John Batiste, USA (Ret)

Colonel Sam Gardiner, USAF (Ret)

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Mr. JONES. I introduced this bill after many, many reflections on the war in Iraq and the Vietnam War. In Vietnam, 58,220 Americans lost their lives. Last week, a column appeared in the Raleigh News and Observer entitled Vietnam 1959 to Afghanistan 2009;

and, Mr. Chairman, I would like to ask again if I might submit this for the record.

Mr. SCOTT. Without objection.

[The information referred to follows:]

THE NEWS&OBSERVER
newsobserver.com

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# From Vietnam 1959 to Afghanistan 2009

**BY JOSEPH L. GALLOWAY, McClatchy-Tribune Information Services**

BAYSIDE, Texas - It was just about half a century ago, on the night of July 8, 1959, that the first two American soldiers to die in the Vietnam War were slain when guerrillas surrounded and shot up a small mess hall where half a dozen advisers were watching a movie after dinner.

Master Sgt. Chester Ovnand of Copperas Cove, Texas, and Maj. Dale Buis of Imperial Beach, Calif., would become the first two names chiseled on the Vietnam Veterans Memorial -- the first of 58,220 Americans who died in Vietnam during the next 16 years.

The deaths of Ovnand and Buis went largely unnoticed at the time, simply a small beginning of what would become a huge national tragedy.

Presidents from Harry Truman to Dwight Eisenhower to John F. Kennedy to Lyndon B. Johnson to Richard M. Nixon to Gerald R. Ford made decisions -- some small and incremental, some large and disastrous -- in building us so costly and tragic a war.

The national security handmaidens of those presidents, especially those who served Kennedy, Johnson, Nixon and Ford, were supposedly the best and brightest that Harvard and Yale and Princeton could contribute.

Presidents right up to today's like to surround themselves with such self-assured and certain men, men whose eagerness to find war the answer to most problems often grows in direct proportion to their lack of experience in uniform or combat.

This small history lesson can be read as a cautionary tale to President Barack Obama's team as it oversees an excruciating slow-motion end of one war, Iraq, and a pell-mell rush to wade ever deeper into another one in the mountains and deserts of remote and tribal Afghanistan.

The story grows out of a battle in the very beginning of the American takeover of the war in South Vietnam in the fall of 1965 when a defense secretary, Robert S. McNamara, counted the bodies and the beans and offered his president two directly opposing options.

In the wake of the Ia Drang Valley battles of November 1965 -- the first major collision between an experimental airmobile division of the U.S. Army and regular soldiers in division strength from the People's Army of North Vietnam -- President Johnson ordered McNamara to rush to Vietnam and assess what had happened and what was going to happen.

Up till then, just more than 1,000 Americans, mostly advisers and pilots, had been killed in Vietnam since Ovnand and Buis. Then, in just five days 234 more Americans had been killed and hundreds wounded in the Ia Drang. McNamara took briefings from Gen. William Westmoreland, the top U.S. commander in Vietnam, and from Ambassador Henry Cabot Lodge and assorted spy chiefs and diplomats. Then he flew to An Khe in the Central Highlands and was briefed on the Ia Drang battles by then Lt. Col. Hal Moore, who had commanded on the ground in Landing Zone XRAY in the Ia Drang.

On the plane home to Washington, McNamara dictated a Top Secret/Eyes Only memo to Johnson dated Nov. 30, 1965. In that report he stated that the enemy had not only met but had exceeded our escalation of the war and we had reached a decision point. In his view there were two options:

• Option One: We could arrange whatever diplomatic cover we could arrange and pull out of South Vietnam.

• Option Two: We could give Gen. Westmoreland the 200,000 more U.S. troops he was asking for, in which case by early 1967 we would have more than 500,000 Americans on the ground, and they would be dying at the rate of 1,000 a month. (He was wrong; the death toll would reach over 3,000 a month at the height of the war). "All we can possibly achieve (by this) is a military stalemate at a much higher level of violence," McNamara wrote.

On Dec. 15, 1965, the president assembled what he called the "wise men" for a brainstorming session on Vietnam. He entered the Cabinet room holding McNamara's memo. He shook it at McNamara and asked: "Bob, you mean to tell me no matter what I do, I can't win in Vietnam?" McNamara nodded yes; that was precisely what he meant.

The wise men sat in session for two days. Participants say there was no real discussion of McNamara's Option One -- it would have sent the wrong message to our Cold War allies -- and at the end there was a unanimous vote in favor of Option Two -- escalating and continuing a war that our leaders knew we could not win.

Remember. This was 1965, 10 years before the last helicopter lifted off that roof in Saigon. It's a hell of a lot easier to get sucked into a war or jump feet first into a war than it is to get out of a war.

There's no question that Obama inherited these two wars, Iraq and Afghanistan, from the Bush/Cheney administration. But the buildup in Afghanistan and the change in strategy belong to Obama and his version of the best and brightest.

The new administration has dictated an escalation from 30,000 U.S. troops to more than 60,000, and even before most of them have actually arrived commanders on the ground are already back asking for more, and why not? When you are a hammer everything around you looks like a nail.

Some smart veterans of both Iraq and Afghanistan, on the ground now or just back, say that at this rate we will inevitably lose the war in Afghanistan; that the situation on the ground now is far worse than Iraq was at its lowest point in 2006 and early 2007. They talk of a costly effort both in lives and national treasure that will stretch out past the Obama administration and maybe the two administrations after that.

Obama needs to call in the "wise men and women" for a fish-or-cut bait meeting on his two ongoing wars. Let's hope that this time around, there's an absence of the arrogance and certainty of previous generations of advisers. Let's hope that they choose to speed up the withdrawal of combat troops from Iraq and get out before the Iraqi people and leaders order us to leave. Let's hope, too, that they weigh very carefully all the costs of another decade or two of war in Afghanistan.

Failing that, they should at the very least begin an immediate drive to increase the number of available beds in military and Veterans Administration hospitals and to expand Arlington National Cemetery and the national military cemeteries nationwide.

**Joseph L. Galloway is a military columnist for McClatchy Newspapers and a former senior military correspondent for Knight Ridder Newspapers; he is co-author of "We Were Soldiers Once ... and Young."**

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Mr. JONES. The author, Joseph Galloway, recounts a meeting between then Secretary of Defense Robert McNamara and President Lyndon Johnson. He writes:

McNamara dictated a Top Secret/Eyes Only memo to Johnson dated November 30, 1965. In that report he said the enemy had not only met but had exceeded our escalation of the war and we had reached a decision point. In McNamara's view, there were two options. Option one, we could arrange whatever diplomatic cover we could arrange and pull out of South Vietnam. Option two, we could give General Westmoreland the 200,000 more U.S. troops he was asking for, in which case we would have more than 500,000 Americans on the ground, and they would be dying at the rate of 1,000 a month. He was wrong. The death total would reach 3,000 a month at the height of the war. All we can possibly achieve by this is a military stalemate at a much higher level of violence, McNamara concluded.

On December 15, 1965, the President assembled what he called the "wise men" for a brainstorming session on Vietnam. Johnson entered the Cabinet room holding McNamara's memo. He shook it at McNamara and asked, Bob, you mean to tell me no matter what I do I can't win in Vietnam? McNamara nodded yes; that was precisely what he meant. This was 1965, 10 years before the last helicopter lifted off the roof in Saigon.

In that case, the President knew we could not win the war, yet he continued on. After that date in 1965, over 56,000 Americans were killed in Vietnam. I bring this up to remind us that the arrogance of power by previous Presidents have prevented them from changing course, from relaying key information. As many have said before me, if we cannot learn from history, we will repeat it.

Members of Congress must be able to trust our President at his word, especially when making decisions to go to war.

On October 7 of 2002, while giving a speech in Cincinnati, Ohio, President Bush talked about Iraq's possession of weapons of mass destruction. He said: The Iraqi regime possesses and produces chemicals and biological weapons. It is seeking nuclear weapons.

In that same speech he said, and I quote, "The evidence indicates that Iraq is reconstituting its nuclear weapons program."

Chairman, I would like to submit a copy of the Senate Intelligence Committee's report June 2008, where these statements were documented.

Mr. SCOTT. Without objection.*

Mr. JONES. I bring up these examples to make the point that we rely on our President's statements when we send U.S. troops abroad.

But let me be clear. The bill is not about the past. The bill is not retroactive and would only apply to Presidents in office during and after the signing of this bill should it become law. In the future, a President must be certain to defend his justification for sending Americans into harm's way where death is a very real possibility; and a President should be held responsible for sending Americans into jeopardy without verifying the facts for going to war. The President does not have the power to go to war simply because it is the President's wish.

I would like to briefly outline the Executive Accountability Act provisions. The bill would impose criminal penalties on Presidents or executive agency officials who knowingly and willfully mislead Congress for the purpose of persuading Congress to authorize the use of Armed Forces; the bill would suspend the running of the 5-

*The information referred to is available in the Appendix.

year statute of limitations until the end of the term of the President in office at the time the offense is committed; and the bill would enable a simple or concurrent resolution by Congress to trigger a referral of a violation to the attorney general. As I have mentioned, the bill would apply to present and future Administrations only, not past Presidents or executive agency officials.

This bill would be inserted at the end of Chapter 47 of Title 18 of the United States Code. This bill is different from existing law—namely, 18 U.S.C. 1001, the False Statements Act—in that it explicitly applies to the President. Legal scholars disagree as to whether or not, theoretically, 18 U.S.C. 1001 would be applied to a President. I think it is important for this Congress to express that it is unacceptable for a President to mislead the Congress when making the case for going to war. This bill makes it clear that a President cannot willfully or knowingly mislead the Congress to authorize the use of United States Armed Forces.

While this bill does not apply to the past, we should learn from the past and demand that our President and executive branch officials do not mislead Congress when asking for authorization to go to war. Lieutenant General Newbold notes in his *Time Magazine* essay, and I quote, "In 1971, the rock group, The Who, released the antiwar anthem, "We Won't Be Fooled Again." General Newbold further states, "To most in my generation, this song conveyed a sense of betrayal by the Nation's leaders, who had led our country into a costly and unnecessary war in Vietnam."

To me, this song serves as a reminder of the importance of the President's truthfulness when trying to gain support for use of Armed Forces. The President should be absolutely certain of a war's justification, and the Congress must be able to rely on the President's statements when making a decision to authorize the use of Armed Forces.

It is my hope that this bill will spark thought and action on this important issue.

And, Mr. Chairman, before closing, I would like to thank Bruce Fein, who will be testifying shortly for his help in drafting this bill, along with my staffer Cybil Roehrenbeck.

And, with that, Mr. Chairman, I want to thank you and the Ranking Member again. I will close by saying to you, without any pride but with humility, that I have signed over 8,000 letters to families and extended families in this country because I believe what I heard in classified briefings. So, with that, Mr. Chairman, thank you again for this opportunity. I would be glad to try to answer any questions.

[The prepared statement of Mr. Jones follows:]

PREPARED STATEMENT OF THE HONORABLE WALTER B. JONES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Statement of Walter B. Jones (NC-3)
**Hearing on H.R. 743, the Executive Accountability Act**
House Subcommittee on Crime, Terrorism, and Homeland Security
July 27, 2009

Chairman, thank you for the opportunity to testify today on my bill, H.R. 743, the *Executive Accountability Act*.

I'd like to begin by reading an excerpt from an essay that appeared in *TIME* magazine in 2006 authored by Lieutenant General Greg Newbold, entitled "Why Iraq was a mistake." Lieut. General Newbold states:

> From 2000 until October 2002, I was a Marine Corps lieutenant general and director of operations for the Joint Chiefs of Staff. After 9/11, I was a witness and therefore a party to the actions that led us to the invasion of Iraq – an unnecessary war. Inside the military family, I made no secret of my view that the zealots' rationale for war made no sense. And I think I was outspoken enough to make those senior to me uncomfortable. But I regret now that I did not more openly challenge those who were determined to invade a country whose actions were peripheral to the real threat – al Qaeda. I retired from the military four months before the invasion, in part because of my opposition to those who had used 9/11's tragedy to hijack our security policy.

Later in the essay, Lieut. Gen. Newbold cites, and I quote, "the distortion of intelligence in the buildup to the war." After reading this article, I met with Lieut. Gen. Newbold, and at least 18 other key figures - including Senator Chuck Hagel, member of the Senate Intelligence Committee - to discuss the justification for the war in Iraq. After these meetings, I was convinced that the war in Iraq was not justified.

I introduced this bill after reflecting on the Iraq War and the Vietnam War, where 58,220 Americans lost their lives. Last week, a column appeared in the *Raleigh News and Observer* entitled, "From Vietnam 1959 to Afghanistan 2009." The column's author, Joseph Galloway, recounts a meeting between then Secretary of Defense Robert McNamara and President Lyndon Johnson. He writes,

> McNamara dictated a Top Secret/Eyes Only memo to Johnson dated Nov. 30, 1965. In that report he stated that the enemy had not only met but had exceeded our escalation of the war and we had reached a decision point. In his view there were two options. Option One: We could arrange whatever diplomatic cover we could arrange and pull out of South Vietnam. Option Two: We could give Gen. Westmoreland the 200,000 more U.S. troops he was asking for, in which case by early 1967 we would have more than 500,000 Americans on the ground, and they would be dying at the rate of 1,000 a month. (He was wrong; the death toll would reach over 3,000 a month at the height of the war). "All we can possibly achieve (by this) is a military stalemate at a much higher level of violence," McNamara wrote. On Dec. 15, 1965, the president assembled what he called the "wise men" for a brainstorming session on Vietnam. He entered the Cabinet room holding McNamara's memo. He shook it at McNamara and asked: "Bob, you mean to tell me no matter what I do, I can't win in Vietnam?" McNamara nodded yes; that was precisely

> what he meant. …This was 1965, 10 years before the last helicopter lifted off that roof in Saigon.

In that case, the President knew that we couldn't win that war, yet he continued on. After that day in 1965, over 56,000 Americans were killed in Vietnam. I bring this up to remind us that the arrogance of power by previous presidents has prevented them from changing course, and from relaying key information. As many have said before me, if we cannot learn from history, we will repeat it.

We must be able to trust our President at his word – especially when making the decision, as Members of Congress, to go to war. On October 7, 2002, while giving a speech in Cincinnati, Ohio, President Bush talked about Iraq's possession of weapons of mass destruction. He said: "The Iraqi regime…possesses and produces chemical and biological weapons. It is seeking nuclear weapons." In that same speech he said: "The evidence indicates that Iraq is reconstituting its nuclear weapon program." These statements were documented in the Senate Intelligence Committee's June 2008 report entitled "Whether Public Statements Regarding Iraq by U.S. Government Officials Were Substantiated by Intelligence Information." I bring up these examples not to hark on the past, but to make the point that we rely on our President's statements when committing to sending U.S. troops abroad.

Let me be clear: this bill is not about the past. The bill is not retroactive, and would only apply to presidents in office during and after the signing of the bill into law. This bill is about the future. In the future, a President must be certain to defend his justification for sending Americans into harms way, where death is a very real possibility. And, Presidents should be held responsible for sending Americans into jeopardy without verifying the facts for going to war. The President does not have the power to go to war simply because it is the President's wish.

I would like to briefly outline the *Executive Accountability Act*'s provisions. The bill would: impose criminal penalties on presidents or executive agency officials who knowingly and willfully mislead Congress for the purpose of persuading Congress to authorize the use of armed forces; suspend the running of the 5-year statute of limitations until the end of the term of the president in office at the time the offense is committed; and, enable a simple or concurrent resolution by Congress to trigger a referral of a violation to the attorney general. As I mentioned before, the bill would apply to present and future administrations only, not past presidents or Executive agency officials.

This bill is different from existing law – namely, 18 USC 1001, the *False Statements Act* – in that it explicitly applies to the President. Legal scholars disagree as to whether or not, theoretically, 18 USC 1001 could be applied to President. I think it is important, as a matter of policy, for this Congress to express that it is unacceptable for a President to mislead the Congress when making the case for going to war. This bill makes it clear that a President cannot willfully or knowingly mislead the Congress to authorize the use of U.S. armed forces.

While this bill does not address the past, we should learn from the past and demand that our President and executive branch officials do not mislead Congress when asking for authorization to go to war. Lieut. Gen. Newbold notes in his *TIME* magazine essay, "In 1971, the rock group The Who released the antiwar anthem We Won't Get Fooled Again. To most in my generation, the song conveyed a sense of betrayal by the Nation's leaders, who had led our country into a costly and unnecessary war in Vietnam." To me, this song serves as a reminder of the importance of the President's truthfulness when trying to gain support for the use of Armed Forces. The President should be absolutely certain of war's justification, and the Congress must be able to rely on the President's statements when making the decision to authorize the use of Armed Forces.

It is my hope that this bill will spark thought and action on this important issue. I thank the Chairman for the opportunity to testify today.

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Mr. SCOTT. Thank you.

Mr. Poe, do you have any questions?

Mr. POE. Well, I have a lot, but I will just ask one, based on your comments, Mr. Chairman.

Do you think that Congress should revisit the War Powers Act?

Mr. JONES. Well, Mr. Poe, I really would love to believe that we would go back to what the Constitution asked the Congress to do, and that is to declare war. And I think that anything we can do to put Congress back into the position where it can advise the President with knowledge that, yes, this is the right thing to do or not the right thing to do.

Again, I went back to Johnson—I could have gone back further, but that would not have been helpful. But when I looked—I read a lot of books. I am not a legal mind as you are and those that will be testifying behind me. But I read many books, from War Made Easily, to the Pretext for War by James Bamford, to the Neo-Conned! Again over the last 5 or 6 years.

And what has troubled me and why I put this bill in, I just think, if no other reason, that it is going to be fully explained that a President in the future must know, before I send American kids to die for nothing, I have to go justify my decision to the Congress; if not, I might be prosecuted.

I don't see where that hurts one thing or another. I think it is too important to review what Johnson did and what I read to you. It is too important to think about the Bush administration making all these statements and yet—I mean, I was very disappointed, quite frankly, in November, December when I saw former President Bush asked by John King, what mistakes did you make; and his answer was, the first mistake, I could not find weapons of mass destruction.

I would have said to John King, my heart has ached because I sent young men and women looking for weapons of mass destruction that did not exist. I didn't hear that word I am sorry that I sent these young men and women to die.

And I had a woman in my office 4 years ago to tell me, my son died looking for weapons that didn't exist. Well, that might—that is what she thought. It is what has been proven. We could not find them.

So I have got a little bit off your question. I apologize.

Mr. POE. One other brief question. The report that you just submitted for the record, wasn't that drafted along pretty much partisan lines? There was a strong minority report, majority report? Of course, that is what came out of the Committee, but it is pretty much partisan.

Mr. JONES. Well, I would say that on the floor I was one of those who made that vote. I have apologized with signing those letters for 6 years.

But, no, truthfully, I believed what I heard. I said that in my statement. I sat right there for almost every one of the classified briefings, and I believed what I was hearing.

Mr. POE. Thank you. Thank you Mr. Jones.

Thank you, Mr. Chairman.

Mr. SCOTT. Thank you.

Representative Jones, I have questions, but I think I am going to reserve them for the other witnesses. And thank you for your testimony and for your compassion on this issue.

Mr. JONES. Thank you, Mr. Chairman. Thank you.

Mr. SCOTT. If our next panel will come forward.

Our first witness will be Dr. Louis Fisher. Dr. Louis Fisher is a Specialist in Constitutional Law with the Law Library of the Library of Congress, after working for the Congressional Research Service from 1970 to 2006. During his service with CRS, he was Research Director for the House Iran Contra Committee in 1987, writing major sections of the final report. His specialties include constitutional law, war powers, and executive legislative relations.

Our second panelist will be Mr. Bruce Fein, a distinguished commentator on legal policy and author of several volumes on the United States Supreme Court, United States Constitution, and international law. At the Department of Justice, he formerly served as the Director of Office of Legal Policy, Legal Advisor to the Assistant Attorney General for Antitrust, and Associate Deputy Attorney General. He served on the American Bar Association's Task Force on Presidential Signing Statements.

And our final witness will be Jonathan Cohn, who is a partner with the law firm of Sidley and Austin, who previously served for several years as Deputy Assistant Attorney General of the United States Department of Justice. During his tenure at the Department of Justice, he was in charge of the Civil Division's appellate staff, which represents the Federal Government in high-profile civil cases. His caseload covered administrative law appeals, commercial disputes, national security issues, and suits challenging the constitutionality of agency regulations and acts of Congress.

Each of our witness' written statements will be entered into the record in its entirety.

I would ask each witness to summarize his testimony in 5 minutes or less. To help stay within that time, there is a lighting device at the table that will begin at green, turn to yellow when there is 1 minute left, and turns to red when the 5 minutes have expired.

And we will begin with Dr. Fisher.

**TESTIMONY OF LOUIS FISHER, SPECIALIST IN CONSTITUTIONAL LAW, LAW LIBRARY OF THE LIBRARY OF CONGRESS, WASHINGTON, DC**

Mr. FISHER. Thank you very much, Mr. Chairman, Mr. Ranking Member.

I appreciate the hearing today because it gives Congress an opportunity to decide what information it needs when it makes the most important choice possible, sending troops to war.

When we look at the bill introduced by Congressman Jones, I think it is consistent with two broad themes in American history; and one is what the Framers new about going to war and, secondly, what we know from the Framers up to now about going to war.

What the Framers knew when they looked at other countries going to war is that single executives go to war not for the national interest. They go to war for reasons of military glory, for fame, for ambition; and the result of those wars was a calamity for the country both in terms of lives lost and fortunes squandered.

So the Framers did not trust in human nature, particularly not in single executives going to war. And if you look at their deliberations they understood that the decision to take the country from a state of peace to a state of war was to be given to Congress alone.

Congress through the deliberative process would decide whether to make that fateful choice.

What the Framers understood was to reject the British model that gave all of the executive power over foreign affairs in war to the executive. That was the Blackstone model; that was the John Locke model. And, instead, all the prerogatives that Blackstone spoke about in his work, not one of his prerogatives is given to the President. They are given to Congress in Article 1, or they are shared between the President and the Congress, such as treaty making and appointing ambassadors.

So that is what the Framers knew, not to trust single executives. They go to war for wrong motivations.

What we have learned since that time I think confirms what the Framers knew about human nature and single executives, is that we have, at least since the Mexican War on, we have wars started by Presidents and executive officials on the basis of false information. It is a fairly steady track record from the 1840's up to the present time. So there is a basis for this bill.

I appreciate what you said, Mr. Chairman, about what happened in 1995 and 1996 when this Subcommittee met to decide what to do after the Supreme Court case in Hubbard. And because of the court decision, the False Statements Act would have criminal prosecution when you make false statements to the executive branch but not when you make false statements to Congress. So, of course, you had to fix that; and you did.

But I think this Subcommittee and Congress did a very thoughtful job in making sure that other values were protected. So you wanted to protect the adversary process in court. You didn't want attorneys in court, in their briefs and oral argument, worrying about a false statements prosecution; and you also wanted to protect the information that Members of Congress need coming from constituents to you and to your staff. And you protected that. So I think there is a way to protect the main value and other values as well.

I say in my statement, I don't think there is any bill of attainder here. Whatever punishment comes, comes not from Congress, as with the Lovett case, but comes from the Justice Department deciding to prosecute and what happens in the courts.

And I also don't think there is any legislative veto or Chadha problem, because you are not trying to control anything in the executive branch. You are just referring a report.

I do have some thoughts at the end of my statement about the bill. I assume that anytime Congress, through a resolution of the two Houses, through a concurrent resolution, submits something to the Attorney General that will be in a report, it will be fully documented, there will be an opportunity of the individual to submit documents, to see documents, to have counsel, and so forth, all your procedural safeguards.

The second point is about prosecuting the President. I think many of us would find it not likely that the Justice Department would want to have a criminal prosecution against a President. But I would say, in addition to having a report involving the President go to the Attorney General, it would go to the Judiciary Committees for consideration of impeachment. And I can see situations where there is enough information coming in about a President where impeachment is not necessary, that the President decides on the basis of information that it is time to retire from office; and we have precedence of that not only for Presidents but for Vice Presidents.

Giving notice to Congress (in my appendix on the Cambodian operation) on the false statements given by President Nixon, the House Judiciary Committee considered whether to have an article of impeachment. It decided not to in part because, although President Nixon spoke falsely to the Nation and to Congress, he told the truth to a couple of Members of Congress in secret.

So I don't know what the Committee wants to do about that, but I don't think it is acceptable to have Presidents making false statements to the country and to Congress in public and then telling the truth to a few people in private.

The last thought, in addition to what was done under this bill, Congress needs, at the time statements are made by the State Department, the Defense Department, by the President, to do your regular oversight; and when people make public statements or statements to you, to call them before you under oath and ask them on what basis they have. And you have to do that at the moment. You can't do it years later when many of these people in public office, I am afraid, will make false statements or misleading statements and assume that they will soon retire from the government after 2 years and then go back to private life.

Thank you very much.

[The prepared statement of Mr. Fisher follows:]

PREPARED STATEMENT OF LOUIS FISHER

# Statement by Louis Fisher

**Specialist in Constitutional Law**
**Law Library of the Library of Congress**

**Appearing before the**

## Crime Subcommittee of the House Committee on the Judiciary

**"The Executive Accountability Act of 2009"**

**July 27, 2009**

Mr. Chairman, thank you for holding this hearing on "The Executive Accountability Act of 2009," H.R. 743. The bill would apply criminal penalties to Presidents and executive officials who knowingly and willfully mislead Congress or the people of the United States for the purpose of gaining support for the use of U.S. armed forces.

Although H.R. 743 was introduced this year, it could have been introduced in 1789 and the framers would have been pleased with it. They knew the dangers of executive wars. They understood that executive military initiatives threaten the legislative powers of war and spending and undermine popular government. They concluded from a careful reading of history that executives promoted wars ruinous to their country, both in lives lost and treasures squandered. The framers believed that only one branch of the U.S. government — Congress — has authority to take the country from a state of peace to a state of war against another nation. In voting on a matter that serious, Members of Congress must have confidence in the information provided by Presidents and executive officials.

**Checking Executive Wars**

The views of the framers about foreign wars are reflected in the writings of John Jay, whose entire career up to 1787 had been in foreign affairs. If anyone might have been sympathetic to executive powers in national security, it would have been Jay. Often we recall what he wrote in Federalist No. 64, where he spoke about the Senate and the treaty power. He said: "It seldom happens in the negotiation of treaties, of whatever nature, but that perfect *secrecy* and immediate *dispatch* are sometimes requisite. There are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery."

Whatever discretion Jay would have entrusted to the President and the Senate in the negotiation of treaties, he was entirely opposed to executive-initiated wars. A warning about executive wars appears in Jay's Federalist No. 4. He said it "is too true, however disgraceful it may be to human nature, that nations in general will make war whenever they have a prospect of getting any thing by it; nay, absolute monarchs will often make war when their nations are to get nothing by it, but for purposes and objects merely personal, such as a thirst for military glory, revenge for personal affronts, ambition, or private compacts to aggrandize or support their particular families or partisans." Those motivations and others, "which affect only the mind of the sovereign, often lead him to engage in wars not sanctified by justice or the voice and interests of his people."

What Jay feared has come to pass. At least since the Mexican War of 1846, Presidents have a record of using misleading statements to justify wars (Appendix A.). The framers understood that government officials can deceive the nation about the need for war. In Federalist No. 3, Jay referred to the causes of war, "whether *real* or *pretended*." In considering the use of military force, Members of Congress must receive from the President and executive officials reliable and truthful information. Legislative deliberation on such a grave matter as war must be informed. There can be no justification for the executive branch to knowingly and willfully mislead Congress and the public about the need for war. Deception and false statements in *time of war* may be necessary, but H.R. 743 focuses on wars of choice in a democratic society.

**Starting-Points**

How should we begin to analyze H.R. 743? All of us have an initial orientation. Some values are foremost in our mind. I am an Institutionalist. I believe in strong political institutions capable of vigorously exercising checks and balances. I believe that individual rights and liberties and our system of democracy are protected by those checks. Ever since I became part of the staff of Congress in 1970 I have been involved in efforts to avoid the concentration of power — especially unchecked power — in the President and the Supreme Court. That is how I began to think about this bill. Of course there are other important values that deserve protection. Some helpful guidance comes from congressional action in 1995-96 on the False Statements Act.

**Weighing Competing Values**

H.R. 743 adopts language from the False Statements Act, Section 1001 of Title 18. The purpose of the bill and the statute is to identify the types of conduct that would merit prosecution of individuals who falsify, conceal, or make other misrepresentations. On May 15, 1995, the Supreme Court in *Hubbard* v. *United States* ruled that Section 1001 covered only false statements made to the executive branch, not to the judiciary or, by implication, to Congress.

*Hubbard* prompted Congress to rewrite Section 1001. A value widely (if not unanimously) shared was that it was unacceptable to have Section 1001 apply only to the executive branch but not to Congress. As Rep. Porter Goss noted: "So, in effect, we have a law on the books that says individuals cannot lie to the executive branch, but it is OK to make false statements to the legislative branch of the Government." 142 Cong. Rec. 17232 (1996). Senator Arlen Specter urged that Section 1001 be revised "to safeguard the constitutional legislative and oversight roles of the Congress. . . . We are of equal standing with the executive and the dignitary injury to the standing of Congress done by *Hubbard* must be overturned promptly." Id. at 19411-12.

During the House hearing on the bill to reverse *Hubbard*, Rep. William J. Martini testified that when Congress conducts oversight and legislates, "[w]e generally operate, and rightfully so, on the assumption that the testimony we receive from various Government officials is accurate and truthful. Many would suggest that it's the enforcement mechanism provided by section 1001 of title 18 that ultimately protects the legislative branch from false statements." "U.S. v. Hubbard: Prosecuting False Statements to Congress," hearing before the Subcommittee on Crime of the House Committee on the Judiciary, 104th Cong., 1st Sess. 4 (1995). Similarly, Senator Specter said that Congress "relies on accurate information to legislate, to oversee, to direct public policy," and unless the information provided to Congress "is accurate, we are unable to fulfill our constitutional functions." "False Statements After the Hubbard v. United States Decision," hearing before the Senate Committee on the Judiciary, 104th Cong., 2d Sess. 2 (1996). Senator Specter added that rewriting Section 1001 "will restore to the law of the land the principle that one cannot knowingly and willfully lie about a material matter to Congress." Id.

The following year, when the House amended Section 1001, the floor manager of the bill discussed a range of values that deserve protection. At the hearing held by the Crime Subcommittee of House Judiciary,

> all of the witnesses agreed that law enforcement must have the ability to punish those who willfully mislead the Government. But they further agreed that such an ability must be weighed against our commitment to free speech, a balanced adversarial system of justice, and a genuine separation of power between the three branches of Government. The witnesses also counseled that we proceed with care. Certain legislative fixes may be unintentionally problematic over the long run. 142 Cong. Rec. 17228 (1996) (remarks by Rep. Bill McCollum, chairman of the Crime Subcommittee).

To safeguard those values, the Subcommittee's bill included certain protections for the judicial and legislative branches. The bill did not apply to formal courtroom proceedings and to statements by counsel in court as part of those proceedings. As Rep. McCollum explained, a failure to establish this exception for the judicial function "would chill vigorous advocacy, and, as such, would have a substantial detrimental effect on the adversarial process." Id.[1]

The second exception covered certain legislative proceedings. The House Judiciary Committee wanted to avoid "creating an atmosphere which might so discourage the submission of information to Congress that it undermines the fact-gathering process which is indispensable to the legislative process." H. Rept. No. 104-680, 104th Cong., 2d

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[1] Initially, the bill provided penalties for individuals who lied or issued false statements "in the context of the administrative duties of the judiciary branch, not its litigation proceedings." 142 Cong. Rec. 17230 (remarks by Rep. William J. Martini). In the course of the House hearing in 1995, Rep. Martini explained some of these administrative duties that would be subject to prosecution under Section 1001, such as the certification process of someone seeking admission to the bar. Among the requirements are letters of recommendation. He cited instances of individuals who had submitted false documents, had not taken the appropriate test, and practiced law illegally. Section 1001 would have covered those actions and other non-courtroom type of proceedings. "U.S. v. Hubbard: Prosecuting False Statements to Congress," hearing before the Subcommittee on Crime of the House Committee on the Judiciary, 104th Cong., 1st Sess. 9-10 (1995). As enacted, however, the bill eliminated the language about "administrative duties" and kept the exclusion for judicial proceedings. The Justice Department testified that the distinction between administrative duties and adjudication was not clear and "very difficult to apply in practice." "False Statements After the Hubbard v. United States Decision," hearing before the Senate Committee on the Judiciary, 104th Cong., 2d Sess. 12 (1996) (statement by Robert S. Litt, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice).

Sess. 4 (1996). As enacted, the bill applied only to administrative matters within Congress (such as a claim for payment) and 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." 110 Stat. 3459 (1996).

In some respects, H.R. 743 raises fewer constitutional questions than the 1996 revision of Section 1001. At the hearing in 1995, a witness expressed concern that Section 1001 might cover accepted lobbying activities and the First Amendment's guarantee of the right to petition government. "U.S. v. Hubbard: Prosecuting False Statements to Congress," hearing before the Subcommittee on Crime of the House Committee on the Judiciary, 104th Cong., 1st Sess. 22 (1995) (statement by Timothy F. Flanigan). During House debate, Rep. Martini remarked: "Congress has always been the arena in which the American people have come to express their ideas and beliefs. We must ensure that we do not stifle public debate on the issues before this body." 142 Cong. Rec. 17230 (1996). H.R. 743 covers only Presidents and executive officials, not private citizens. Of course H.R. 743, unlike Section 1001, has no application to the judicial branch.

**A Bill of Attainder?**

At what point would a congressional resolution under H.R. 743, directed against the President or an executive official, step over the line and become an unconstitutional bill of attainder — legislative punishment without judicial trial? Lawmakers often single out Presidents and executive officials for criticism, even harsh condemnation. Public officials and private parties who testify before congressional committees may have their integrity attacked, in full view of the television audience. Presidents, executive officials, lawmakers, and judges are possible targets of rebuke. Individuals who enter public office understand that they can be the subject of painful attacks, fair and unfair. What then constitutes a prohibited bill of attainder?

A prominent example of a bill of attainder dates from 1943 when the House of Representatives created a subcommittee to examine claims against federal employees and empowered it to hold hearings, call witnesses, subpoena documents, and report its results. The purpose was to determine whether the employees were unfit to remain in office because of their present or past association with organizations "whose aims or purposes are or have been subversive to the Government of the United States." 89 Cong. Rec. 734 (1943). Subcommittee chairman John Kerr later acknowledged: "We discovered after organization the fact that there had never been declared judicially or by any legislative body what constituted subversive activities in respect to this Government." Id. at 4582. Even if there were no judicial or legislative definitions of subversive, government employees so designated were at risk of losing not only their job but employment prospects elsewhere.

The subcommittee allowed federal employees accused of subversive activities to appear and defend themselves, but no one could understand the meaning of subversive.

The subcommittee drafted language to deny the use of federal appropriations to pay the salaries of three executive officials: Goodwin B. Watson, William E. Dodd, Jr., and Robert Morss Lovett. Emanuel Celler of the Judiciary Committee objected that Congress was attempting "to discharge certain men in the Government service because of their opinions. It is primarily just that." Id. at 4546. Rep. John Coffee criticized lawmakers who wanted to sit "as judge, as jury, and as prosecutor." Id. at 4548. To Rep. George Outland, the House action "smacks far more of the tactics of the Nazis and the Fascists, against whom we are fighting, than of the spirit of American justice and fair play." Id. at 4547. For Rep. Samuel Hobbs, the subcommittee effort represented "a bill of pains and penalties within the meaning of the constitutional prohibition." Id. at 4597. The subcommittee language passed the House, 318 to 62.

The Senate found the House amendment offensive, voting 69 to zero to delete it. When the language appeared in the conference report, the Senate voted 52 to 17 against it. But eventually the Senate acquiesced and the bill with the subcommittee amendment went to President Franklin D. Roosevelt. Objecting to the House language, he signed the bill because it contained urgently needed funds for the war effort. In his signing statement, he condemned the bill language for punishing federal employees for their "political opinions." He found the language not only unwise and discriminatory but unconstitutional as a bill of attainder. Louis Fisher, The Constitution and 9/11: Recurring Threats to America's Freedoms 141-42 (2008).

Watson, Dodd, and Lovett filed suit in federal court. The Court of Claims, without reaching the constitutional issue, ruled that they were entitled to recover the salaries they had lost. Lovett v. United States, 66 F.Supp. 142, 148 (Ct. Cl. 1945). On appeal, the Supreme Court went directly to the constitutional question, pointing out that the amendment "stigmatized their reputation and seriously impaired their chance to earn a living." United States v. Lovett, 328 U.S. 303, 314 (1946). The Court pointed out that no record indicated how much of the subcommittee records or FBI files the subcommittee relied on consisted of untested allegations taken from anonymous and unreliable informants. Id. at 311.

More recent cases have involved the Bill of Attainder Clause. A case from 1965 found that a section of a 1959 statute making it a crime for a Communist Party member to serve as a member of the executive board of a labor organization violated the Clause. United States v. Brown, 381 U.S. 437 (1965). Another case from the 1980s raised issues of a bill of attainder, because a statute took aim at a particular person (Dorothy Blitz) who belonged to the Communist Workers Party. The statutory language was found unconstitutional on its face for penalizing mere advocacy of an idea without any evidence of violent action. Blitz v. Donovan, 538 F.Supp. 1119, 1125-26 (D.D.C. 1982). It was therefore invalid under the First Amendment without reaching the Bill of Attainder Clause. After Blitz was reinstated in her federal job, the Supreme Court vacated the district court judgment and remanded the case with instructions to dismiss the complaint as moot. Donovan v. Blitz, 459 U.S. 1095 (1983). Following the remand, the district court granted attorney's fees to Blitz.[2]

I see nothing in H.R. 743 that represents a bill of attainder. Congress has every right to assure that the information it receives from the executive branch about the need for military action is not misleading and deceptive. The bill does not directly punish conduct by legislation. It prohibits conduct and establishes a procedure to refer that conduct to the executive branch and to the judiciary. If Congress passed a resolution and referred it to the Justice Department for possible prosecution, it acts within its constitutional authority. Whatever punishment might result would come from the combined efforts of prosecution by the executive branch and judgment by the courts. H.R. 743 has no relationship to the *Lovett* case.

**A *Chadha* Problem?**

Does the procedure in H.R. 743, using simple or concurrent resolutions to refer an action to the Attorney General, violate the Supreme Court's decision in *INS* v. *Chadha* (1983)? I don't think so. In *Chadha*, the Court struck down the "legislative veto" and held that whenever congressional action has the "purpose and effect of altering the legal rights, duties, and relations of persons" outside the legislative branch, Congress must act through both houses in a bill presented to the President, satisfying both bicameralism and the Presentment Clause. 462 U.S. 919, 952 (1983). The Court's decision eliminated one-house and two-house resolutions that controlled executive branch actions.

H.R. 743 does not attempt to control or compel the executive branch. It creates a procedure that authorizes one chamber by simple resolution or both chambers by concurrent resolution to refer a matter to the Attorney General. At that point the executive branch has full discretion to prosecute. The procedures in H.R. 743 are similar to those followed when Congress holds someone in contempt and refers the matter to the Justice Department. A similar procedure applied to the independent counsel statutes. For example, the House Judiciary Committee could hold hearings and prepare a report, to be submitted to the Attorney General, urging that an independent counsel be appointed. But it was up to the Attorney General to go to the special panel of judges to seek and obtain an independent counsel. Katy J. Harriger, The Special Prosecutor in American Politics 100-02 (2d ed. 2000). As with H.R. 743, Congress could encourage but not compel and therefore no *Chadha* issue arises.

**Proposed Changes in H.R. 743:**

**A. The Need for Documentation**

Because of the potential problem of a bill of attainder, or at least the appearance of unfair congressional damage to individual reputations, it is important under H.R. 743

[2] Blitz v. Donovan, 569 F.Supp. 58 (D.D.C. 1983). For more recent cases that discuss bills of attainder, see SBC Communications, Inc. v. F.C.C., 154 F.3d 226 (5th Cir. 1998), cert. denied, 525 U.S. 1113 (1999); Foretich v. United States, 351 F.3d 1198 (D.C. Cir. 2003).

to assure that any decision by Congress to refer an action to the Attorney General for prosecution be accompanied by a legislative document providing detailed factual and analytical justification. The document would identify the statements by the Presidents or executive officials and why they knowingly and willfully misled Congress or the people of the United States about the use of military force. The report would explain why those statements violated one or more of the three paragraphs listed on lines 3 to 9 of page 2 of the bill. Language could be added to H.R. 743 to give specific guidance on these report requirements. The more credible the legislative document, the greater the likelihood of action by the Justice Department. Congress would want to provide individuals subject to H.R. 743 full opportunity to defend themselves: access to legal counsel, an ability to see and challenge assertions against them, and to submit documents and evidence in their defense.

**B. Prosecuting the President**

The principal means of acting against a President is impeachment. For that reason, I would have the House or Senate resolution contemplated in H.R. 743 be referred not just to the Justice Department but to the Judiciary Committees. Although there would be little expectation that the Justice Department would attempt to prosecute a President, in some situations there may be sufficient evidence already accumulated against a President to make the case for resignation. A congressional resolution referred to the Justice Department would give added weight to that option.

**C. Giving Notice to Congress**

As explained in Appendix A, the House Judiciary Committee in 1974 decided against reporting an Article of Impeachment regarding the concealment by President Nixon of his bombing campaign in Cambodia. The committee concluded that the Administration's decision to inform a few Members of Congress about the bombing constituted sufficient notice. Language could be added to H.R. 743 to clarify that it would not be permissible for the President and executive officials to knowingly and willfully mislead Congress and the people of the United States about military initiatives while telling the truth to a selected number of lawmakers.

**Regular Oversight**

In addition to floor action on simple resolutions and concurrent resolutions that charge certain individuals with knowingly and willfully misleading Congress and the American public on the use of military force, congressional committees can call executive officials to testify on why "facts" in a State Department document were not facts but errors, and why claims made in speeches were based on unreliable intelligence sources. Without regular and close congressional oversight, executive officials may conclude that whatever liberties they took with the truth while in public office will not be discovered until years after they have left government.

## Appendix A:
## Misleading Justifications for War

It has been said that "[b]efore the 1960s, few could even imagine that a president would deliberately mislead them on matters so fundamental as war and peace." Eric Alderman, When Presidents Lie: A History of Official Deception and Its Consequences 294 (2004). The record before the 1960s is not so benign. On a number of occasions Presidents and executive officials resorted to misleading statements to attract public and legislative support for military action.

**Mexican War.** In the spring of 1846, President James Polk ordered General Zachery Taylor to occupy disputed territory along the Texas-Mexico border. Polk later learned there had been a military clash between American and Mexican forces. Despite the legal uncertainties of the disputed land, on May 11, 1846, President Polk sent a message to Congress stating that the Mexican Government not only refused to receive a U.S. envoy to discuss a peaceful settlement of disputes between the two countries but "after a long-continued series of menaces have at last invaded our territory and shed the blood of our fellow-citizens on our own soil." 5 A Compilation of Messages and Papers by the Presidents 2288 (James D. Richardson ed.).

On December 22, 1847, Rep. Abraham Lincoln introduced what is called the "Spot Resolutions." In referring to the May 11, 1846 message by President Polk and a subsequent message from Polk of December 7, 1847, both of which claimed that American blood had been shed on American soil, Lincoln stated that the House was "desirous to obtain a full knowledge of all the facts which go to establish whether the particular spot on which the blood of our citizens was so shed was or was not at that time *our own soil*." Eight resolutions sought additional information. The first: "Whether the spot on which the blood of our citizens was shed, as in his messages declared, was or was not within the territory of Spain, at least after the treaty of 1819, until the Mexican revolution." The second: "Whether that spot is or is not within the territory which was wrested from Spain by the revolutionary Government of Mexico." The other six resolutions inquired whether the territory on which the casualties occurred was ever under the government or laws of Texas or of the United States. Cong. Globe, 30th Cong., 1st Sess. 64 (1847).

In 1848, the House of Representatives passed a resolution censuring President Polk for "unnecessarily and unconstitutionally" beginning the war. The resolution passed by a vote of 85 to 81. During the course of this debate, several Members of Congress charged that there had been lies and deception on the part of President Polk.

The initial purpose of the resolution, debated on January 3, 1848, was to extricate the United States from a war that had become increasingly burdensome financially and in lives lost. The resolution directed that a committee of five Senators and five

Representatives meet with President Polk "to advise and consult upon the best mode of terminating the existing war with Mexico in a manner honorable and just to both belligerents." Cong. Globe, 30th Cong., 1st Sess., at 94. Rep. Ashmun offered to amend the resolution by adding the words "in a war unnecessarily and unconstitutionally begun by the President of the United States." Debate was not in order on this amendment. His amendment passed, 85 to 81. Reference to a war "unnecessarily" begun could mean several things, including (1) a President who sought to initiate war on the basis of information that was accurate but nonetheless fell short of necessity, or (2) a President who sought to initiate war on the basis of information that was misleading and therefore short of necessity. Since the amendment was accepted without debate, it is not clear which interpretation has greater merit. On the following day, January 4, 1848, the Senate debated this language:

> *Resolved*, That to conquer Mexico and to hold it, either as a province or to incorporate it into the Union, would be inconsistent with the avowed object for which the war has been prosecuted; a departure from the settled policy of the Government; in conflict with its character and genius; and in the end subversive of our free and popular institutions.
>
> *Resolved*, That no line of policy in the further prosecution of the war should be adopted which may lead to consequences so disastrous. Id. at 96.

In debating these two resolutions, Senator John Calhoun explained why he had opposed the war from the beginning, in part because President Polk chose to put U.S. troops into disputed territory, leading to hostilities, and that Polk had not properly explained the facts to Congress when he asked it to declare war:

> I opposed the war then, not only because I considered it unnecessary, and that it might have been easily avoided; not only because I thought the President had no authority to order a portion of the territory in dispute and in possession of the Mexicans, to be occupied by our troops; not only because I believed the allegations upon which it was sanctioned by Congress, were unfounded in truth; but from high considerations of reason and policy, because I believed it would lead to great and serious evils to the country, and greatly endanger its free institutions. Id.

On January 12, 1848, Rep. Lincoln explained why he voted for the amendment declaring that the war with Mexico had been "unnecessarily and unconstitutionally commenced" by President Polk. Lincoln called attention to Polk's claim that in the hostilities that began in disputed territory, American blood had been shed on American soil. As Lincoln noted, President Polk had stated that

> hostilities were commenced, or blood was shed — American blood was shed on American soil. And of so much importance did the President deem the declaration that the place, the very spot where blood was first spilled was our own soil, that he followed it up, and repeated that

> declaration in almost the same language in every successive message, certainly in every annual message since. The President seemed to attach great importance to the assumed fact that the soil was our own where hostilities commenced. Id. at 155.

Lincoln remarked that in Polk's annual message in December 1846, "he came forward with a string of proof on that point." Polk "made an issue which was a false issue." Polk had stated: "But there are those who, conceding all this to be true, assume the ground that the true western boundary of Texas is the Nueces instead of the Rio Grande; and that, therefore, in marching our army to the east bank of the latter river, we passed the Texas line, and invaded the territory of Mexico."

Lincoln proceeded to dispute Polk's argument that American blood had been shed on American soil. He said he had proposed that Polk talk to the House of Representatives "on this point, which he seemed exceedingly anxious to avoid." If Polk came forward "frankly and give them facts, not arguments," Lincoln said he would be "most happy to reverse his vote." Without such facts, Lincoln was "fully convinced, of what he more than suspected, that the President was deeply conscious of being in the wrong in this matter; that he felt the blood of this war, like the blood of Abel, was crying from the ground against him; that originally he must have had some strong motive — what it was he would not now stop to inquire — for involving the two countries in war; that, having that motive, he had trusted to avoid the scrutiny of his own conduct by directing the attention of the nation, by fixing the public eye upon military glory — that rainbow that rises in showers of blood — that serpent's eye that charms but to destroy; and thus calculating, had plunged into this war, until disappointed as to the ease by which Mexico could be subdued, he found himself at last he knew not where." Id. at 156.

Lincoln added that whoever "carefully examined" Polk's message "would find that, like one in the half insane excitement of a fevered dream," that Polk had made a number of inconsistent arguments in favor of the war. "He talked like an insane man." Id.

**Spanish-American War.** On February 15, 1898, the American battleship *Maine* was destroyed while sitting in the Havana harbor. The explosion killed 260 officers and crew. President William McKinley, after ordering an investigation to determine the cause of the blast, reported to Congress on April 11 that a naval court of inquiry had concluded unanimously that the destruction of the ship "was caused by an exterior explosion — that of a submarine mine." He said the board "did not assume to place the responsibility. That remains to be fixed." 13 A Compilation of the Messages and Papers of the Presidents 6290. On April 20, Congress passed a joint resolution demanding the withdrawal of Spanish armed forces from Cuba and directing the President to use military force to carry out that policy. 30 Stat. 738 (1898).

Subsequent studies concluded that the *Maine* was accidentally destroyed not from the outside (presumably by Spain or by agents of Spain) but by an internal explosion. Inadequate ventilation within the ship led to a fire that set off nearby gunpowder. Lewis

L. Gould, the Spanish-American War and President McKinley 35 (1982). From 1895 to 1898, 13 other American ships had fires associated with spontaneous combustion. John L. Offner, An Unwanted War: The Diplomacy of the United States and Spain Over Cuba, 1895-1898, at 123 (1992).

**World War I.** Upon the outbreak of the European war in 1914, President Woodrow Wilson issued proclamations of neutrality. This policy of neutrality gave way gradually to a preference for England over Germany. In an address delivered to Congress on December 7, 1915, he recommended an increase in the size of the army, acceleration of shipbuilding, and a strengthening of the merchant marine. 16 A Compilation of the Messages and Papers of the Presidents 8106-10. Nevertheless, his reelection campaign in 1916 relied heavily on a promise to keep America out of war. His renomination at the Democratic convention was accompanied by shouts of "He Kept Us Out of War." On the eve of the election, on October 31, 1916, he announced: "I am not expecting this country to get into war." Harry A. DeWeerd, President Wilson Fights His War: World War I and the American Intervention 21 (1968).

**1964, Tonkin Gulf.** On August 3, 1964, President Lyndon B. Johnson ordered the Navy to take retaliatory actions against the North Vietnamese for their attacks in the Gulf of Tonkin. He acted following an attack on the U.S. destroyer *Maddox* by Communist PT boats. His August 4 radio and television report to the American public offered further details on the incident and described a second attack, this one against two American destroyers. The first attack did not provide grounds for a major military commitment. Questions were raised as to whether there was a second attack, but Congress proceeded to pass the Gulf of Tonkin Resolution, approving and supporting the determination of the President, as Commander in Chief, to take "all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression."

On August 4, a U.S. naval commander in the area cabled that review of the second action "makes many recorded contacts and torpedoes fired appear doubtful. Freak weather effects and over-eager sonarman may have accounted for many reports. No actual visual sightings by *Maddox*. Suggest complete evaluation before any further action." "The Gulf of Tonkin, The 1964 Incidents," hearing before the Senate Foreign Relations Committee, 90th Cong., 2d Sess. 54 (1968). In 1964, Secretary of Defense Robert McNamara had no doubts about the second attack. After a trip to Vietnam in 1995, he announced that he was "absolutely positive" the second attack never took place. Keith B. Richburg, "Mission to Hanoi," Washington Post, November 11, 1995, at A21, A25. A study published in 1996 concluded on the basis of documents and interviews that the second attack never occurred. Edwin E. Moïse, Tonkin Gulf and the Escalation of the Vietnam War (1996).

In 2005, the National Security Agency released documents dated February 24, 1998 that explain that the "second attack" was actually late signals coming from the first.[3] Did President Johnson and other top officials in his administration knowingly and willingly mislead Congress and the American people? At what point between August 1964 and February 24, 1998 did NSA know that the claim of a second attack was false? Staff members of the Senate Foreign Relations Committee had evidence in the 1960s that a second attack did not happen. J. Norville Jones, letter to the New York Times, November 23, 1995, at A22.

**Free World Forces, 1966-70.** After President Johnson escalated the war in Vietnam, beginning in February 1965, he attempted to build support for the military commitment by pointing to allies who had offered their assistance. In September 1966 he expressed his "deep admiration as well as that of the American people for the action recently taken by the Philippines to send a civic action group of 2,000 men to assist the Vietnamese in resisting aggression and rebuilding their country." Public Papers of the Presidents, 1966, II, at 1029. Other announcements from the White House created the false impression that the commitment by the Philippines was matched by voluntary contributions from Thailand, South Korea, and other members of what the administration called the "Free World Forces."

Hearings by Senator Stuart Symington in 1969 and 1970 discovered a number of secret agreements between the Johnson administration and the Free World Forces. The administration had offered sizeable subsidies to those countries to encourage their assistance: river patrol craft, engineering equipment, a special overseas allowance for the soldiers they sent to Vietnam, and hundreds of millions of dollars. Louis Fisher, Presidential War Power 135-37 (2d ed. 2005).

**1974, Cambodia.** On July 30, 1974, the House Judiciary Committee considered a proposed Article of Impeachment dealing with President Nixon's unauthorized bombing of Cambodia and the concealment of that bombing from Congress. It read:

> In his conduct of the office of President of the United States, Richard M. Nixon in violation of his constitutional oath faithfully to 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 disregard of his constitutional duty to take care that the laws be faithfully executed, on and subsequent to March 17, 1969, authorized, ordered, and ratified the concealment from the Congress of the facts and the submission to the Congress of false and misleading statements concerning the existence, scope and nature of American bombing operations in Cambodia in derogation of the power of the Congress to declare war, to make appropriations and to raise and support armies, and by such conduct warrants impeachment and trial and removal from office.

[3] Robert J. Hanyok, "Skunks, Bogies, Silent Hounds, and the Flying Fish: The Gulf of Tonkin Mystery, 2-4 August 1964," Cryptologic Quarterly, declassified by the NSA on November 3, 2005. See Scott Shane, "Doubts Cast on Vietnam Incident, But Secret Study Stays Classified," New York Times, October 31, 2005, at A1.

The committee voted 26 to 12 in deciding not to report this proposed Article to the House. The committee report provided details about the bombing. On February 11, 1969, President Nixon received from his military advisors the initial request to institute the bombing. On March 17, 1969, after several National Security Council meetings, he approved the request and directed that the operation be undertaken under tight security. On March 18, 1969, the bombing of Cambodia began with B-52 strikes and continued until May 16, 1970, almost one month after the American incursion into Cambodia. The operational reports prepared after each mission falsely stated that the air strikes had taken place in South Vietnam rather than in Cambodia.

Between April 24 and May 24, 1970, American planes carried out tactical air strikes in Cambodia. No operational reports were made with respect to those bombings. Before June 30, 1970, an unspecified number of air strikes took place in various parts of Cambodia. No regular reports were prepared. On May 14, 1970, a one-day series of air strikes were conducted, with operational reports stating that they had occurred in Laos rather than Cambodia. Some tactical air sorties were correctly reported as having occurred in Cambodia.

On July 1, 1973, Congress enacted P.L. 93-50 and P.L. 93-52, ordering the cessation of all bombing in Cambodia by August 15, 1973. During hearings before the Senate Armed Services Committee, military and Administration witnesses testified that the bombing was not publicly acknowledged because of what was considered a delicate diplomatic and military situation in Southeast Asia before the U.S. incursion into Cambodia. These witnesses stated that it was their understanding that Cambodia's ruler, Prince Sihanouk, had privately agreed to the bombing of Cambodia before his overthrow. Their testimony stated that certain Members of Congress had been informed of the military action and that this provided sufficient notice to Congress of the President's military decision. The witnesses said that the submission of false data to Congress resulted from the highly classified nature of the accurate bombing statistics.

The House Judiciary Committee analyzed the views of those who advocated this Article of Impeachment. Supporters argued that the Constitution vests the power to make war in Congress and implicitly prohibits the President from waging an undeclared war. They said that President Nixon, by issuing false and misleading statements, failed to provide Congress with complete and accurate information and prevented Congress from responsibly exercising its powers to declare war, raise and support armies, and make appropriations. They further stated that informing a few selected Members of Congress about the Cambodian bombing did not constitute the constitutionally required notice, particularly in view of Nixon's contemporaneous public statements that were contrary to the facts. The supporters of the Article argued that the selected lawmakers were committed to a course of military action that did not represent the views of a substantial portion of American citizens. They stated that Congress had not ratified Nixon's conduct through inaction or by its 1973 limitation on bombing because Congress did not know of the bombing until after it had voted on the authorization. Lastly, they asserted that the technicalities or merits of war in Southeast Asia, congressional acquiescence, positions taken by Prince Sihanouk, and past conduct by U.S. Presidents were not relevant to whether President Nixon had unconstitutionally usurped Congress' war-making and appropriations powers.

For several reasons, the House Judiciary Committee decided not to report the Article to the House. The committee concluded that President was performing his constitutional duties when he ordered the bombings and Congress had been given sufficient notice of the bombings. Several Members stated that Nixon as Commander-in-Chief was acting to protect American troops and that previous Presidents had engaged in similar military activities without seeking or obtaining prior congressional consent. Rep. John Seiberling (D-Ohio) stated that because of Nixon's decision not to declassify certain materials, that evidence could not be made public or be discussed during the committee's consideration of the Article. Seiberling said that this prevented the public use of certain documents that tied Nixon to acts of concealment. Examining the bombing of Cambodia from the perspective of congressional responsibility, opponents of this Article concluded that even if President Nixon had usurped congressional power, Congress shared the blame by acquiescing or ratifying his actions. They stated that Nixon had provided sufficient notice of the military actions by informing selected Members and that passage of the War Powers Resolution of 1973 mooted the questions raised by the Article. Source: "Impeachment of Richard M. Nixon, President of the United States," report of the House Committee on the Judiciary, 93d Cong., 2d Sess., Report No. 93-1305, August 20, 1974, at 217-19.

**Iran-Contra.** On November 3, 1986, a Lebanese periodical, *El Shiraa*, disclosed a secret U.S. program of selling arms to Iran. Funds from those sales were used to assist the Contra rebels in Nicaragua, in violation of a congressional statute that prohibited military assistance to the Contras. A special committee of Congress in each house filed a joint report, concluding that senior executive officials "misled Congress, withheld information, or failed to speak up when they knew others were giving incorrect testimony." "Iran-Contra Affair," H. Rept. No. 100-433, S. Rept. No. 100-216, 100th Cong., 1st Sess. 381 (November 1987).

Lawrence E. Walsh was appointed Independent Counsel to investigate the Iran-Contra Affair. He prosecuted many executive branch officials for testifying falsely to congressional committees. Several individuals within the National Security Council, including John Poindexter, Robert McFarlane, and Oliver North, were forced to resign and faced prosecution, as did other executive officials in the State Department, Defense Department, and the Central Intelligence Agency. Some of those prosecutions were blocked in December 1992 when President George H. W. Bush issued six pardons to Iran-Contra figures. Three were CIA officials (Duane Clarridge, Alan Fiers, and Clair George). The other three were former Secretary of Defense Caspar Weinberger, Assistant Secretary of State Elliott Abrams, and McFarlane. A number of private citizens who participated in the illegal assistance to the Contras were also prosecuted and convicted. Several convictions were reversed by an appellate court because of immunity granted by Congress. Lawrence E. Walsh, Firewall: The Iran-Contra Conspiracy and Cover-Up (1997).

**2002-03, Uranium Ore Claim.** On December 19, 2002, the State Department released a "Fact Sheet" (prepared jointly with the CIA) that criticized a "declaration" issued by Iraq about weapons of mass destruction. According to the department, the declaration "ignores efforts to procure uranium from Niger. *Why is the Iraqi regime hiding their uranium procurement?*" U.S. Department of State, "Illustrative Examples of Omissions From the Iraqi Declaration to the United Nations Security Council," Fact Sheet, December 19, 2002 (emphasis in original).

In his State of the Union address in January 2003, President George W. Bush told Congress that the "British Government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa." One might wonder why a President would rely on British intelligence instead of American intelligence, but the assertions by the State Department and President Bush were later discredited when it was discovered that the key piece of evidence on Iraq seeking uranium ore from Africa was fabricated. On July 7, 2003, the Bush administration conceded that the President should not have included in the State of the Union address the claim that Iraq tried to buy uranium in Africa. Walter Pincus, "White House Backs off Claim on Iraqi Buy," July 8, 2003, at A1: David E. Sanger, "Bush Claim on Iraq Had Flawed Origin, White House Says," New York Times, July 8, 2003, at A1.

On July 11, 2003, CIA Director George Tenet took personal responsibility for the assertion being included in the State of the Union address. He explained that agency officials, in approving the President's address, "concurred that the text in the speech was factually correct — i.e., that the British government report said that Iraq sought uranium from Africa." But he said it was a mistake to clear a presidential address on that ground: "This did not rise to the level of certainty which should be required for presidential speeches, and C.I.A. should have ensured that it was removed." David E. Sanger and James Risen, "C.I.A. Chief Takes Blame in Assertion on Iraqi Uranium," New York Times, July 12, 2003, at A1, A5. What other executive officials were involved in preparing and distributing this misleading information?

**2003, Powell Presentation.** When Secretary of State Colin Powell appeared before the UN Security Council on February 5, 2003, making the case for war against Iraq, he said that "every statement I make today is backed up by sources, solid sources. These are not assertions. What we're giving you are facts and conclusions based on solid intelligence." Transcript as printed in the New York Times, February 6, 2003, at A14. As Powell, Congress, and the American public would learn, what he presented to the UN (and to the world) were not facts but assertions, and the assertions were not grounded on solid intelligence. The Senate Intelligence Committee concluded that much of the information provided or cleared by the CIA to be included in Powell's speech to the UN "was overstated, misleading, or incorrect." "U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq," Report of the Senate Committee on Intelligence, S. Report 108-301, 108th Cong., 2d Sess. (2004), at 253.

Mr. SCOTT. Thank you.
Mr. Fein.

**TESTIMONY OF BRUCE FEIN, LEGAL CONSULTANT, WASHINGTON, DC**

Mr. FEIN. Thank you, Mr. Chairman and Members of the Committee.

I want to begin by expressing what I think is the clear constitutional basis for the bill; and then I want to address some of the issues that have been raised about the application of the False Statements Act, politicization or otherwise, that I think Congressman Poe had addressed in his opening statement.

I think it is absolutely clear, as Mr. Fisher expressed, the Founding Fathers were unanimous that the sole power of initiating authority for war was with the Congress. The express statements are too numerous to enumerate in a particular hearing, but it ranged from those who supported a strong legislative branch to those who wanted a very muscular executive, the latter being Alexander Hamilton, who, despite being known as someone who is a strong proponent of perhaps even a semi monarchy, still in the Federalist Papers made clear that, unlike the King of Great Britain, the President of the United States would not have any authority to initiate war.

So we start out with a clear, exclusive authority of Congress to initiate war. And so under the Article 1, section 8, clause 18, the necessary and proper clause, Congress is entrusted with authority to pass laws that are necessary and appropriate to assist the regulation or implementation of that power. And, obviously, one way in which necessary and proper clause works there is to ensure that Congress is receiving accurate information, or at least not knowingly false information, from the President of the United States that bears materially on their decision whether or not to authorize war.

And, remember, here this is not a First Amendment problem about freedom of speech. The only kind of speech that would expose the President to criminal penalties is speech that is knowingly false and materially false. That satisfies what the lawyers call *The New York Times* and Sullivan standard of protecting speech. When it is knowing and intentional and it is a materially false statement of fact, it is not protected by the First Amendment. That is why I don't believe that there is any problem in the application of this law to Presidential statements.

Now, there is another question. What would this law incline the President to do? If the President wanted an absolute shield against any conceivable accusation that this was violated, he simply needs to share all of the information he relied upon to Congress, which is what we like him to do. He doesn't have to share it in public. He can share it in executive session. And then he says, based upon my opinion, this justifies war.

But he can't be accused of a false statement. He is letting Congress have access to the same information that he had. Congress makes their independent decision. He could not possibly be accused of violating this law, because he is not making a personal assertion of fact that he knew that it was materially false.

Now, what it is that makes this statute very, very important in my judgment is going back why do we need to worry about false statements by the President, knowingly false to get us into war. The Founding Fathers understood, as Madison said, when war comes, the President gets the secrecy, he gets the money, he gets the possible glory of transforming the world, if you will.

The Congress needs to have to make the best decision, because it doesn't have any incentive to warp or skew the danger to get us into war. When war comes, Congress doesn't get the money. Congress gives the money. Congress doesn't get the secrecy. Congress doesn't get the appointment power. Congress doesn't get the fame and remembrance.

It doesn't mean that Congress is infallible. Like any institution, it can make errors. But Congress doesn't have any systematic incentive to inflate danger to get us into needless wars because they don't get benefits. They get the tragedy of writing, as Congress Jones said, to the mothers and fathers of their children who have died, why did you die.

And I think if you look historically there has never been an abuse or a rush of Congress into war. They have been encouraged, exhorted by the Presidents. The most recent being, of course, the Gulf of Tonkin resolution that was passed when President Johnson, perhaps in good faith, misrepresented the alleged North Vietnamese torpedo attacks on U.S. ships. But it is not Congress that is rushing us into war.

I don't believe that, given the importance of this particular statute, that we should leave it to the ambiguities of the false statements laws to whether it applies to the President or not. We know that in the context of the Iraqi war resolution, when there were clear misstatements made, whether they were knowing or not, about weapons of mass destruction, I don't know anyone who was saying, hey, how come 1001 doesn't apply. I think there is obviously clear ambiguity or uncertainty as to whether it applied.

When it comes to the President, it is not fair to leave him to snares out there and letting him guess whether the statute applies. We want to make it as unambiguous as possible so he has fair notice and fair warning.

And the last issue of can this statute be politicized in its enforcement capacity, can Congress politicize the enforcement, well, Congress doesn't have authority under separation of powers to initiate a criminal prosecution. They can make recommendations, as they can with regard to any other alleged violation of the Criminal Code, whether it is obstruction of justice or otherwise, but the ultimate decision here is in the executive branch. It can be by a special prosecutor, but Congress certainly cannot politicize this particular matter.

Now, that doesn't mean to suggest that in the executive branch it can't be politicized. Obviously, that is true of every single crime there is. Because the Constitution does entrust the prosecutorial discretion to the President and the President alone, absent I guess you could create an independent council, as was done with regard to the Morrison Olson case, that would be outside the President's authority to fire unilaterally.

But, overall, Mr. Chairman I believe this is a sound bill. I think it is an urgent bill.

I think we have two possibilities on the horizon where it might arguably come into play. One is Iran. We know the arguments about possessing weapons, nuclear weapons, and warheads and whether Iran is about ready to attack Israel, that kind of thing. That could be a case where war could be on the horizon.

The other is in Pakistan, where you could imagine a President saying, you know, Taliban is about ready to take over the country, Pakistan is a nuclear-armed country, we need to go to war, things of that sort.

I am not suggesting that a President would make misstatements, but the idea that wars are over, we are not going to confront problems with Presidential characterizations of danger are gone, I think are misplaced.

Thank you.

[The prepared statement of Mr. Fein follows:]

PREPARED STATEMENT OF BRUCE FEIN

STATEMENT OF BRUCE FEIN

RE: H.R. 743: THE EXECUTIVE ACCOUNTABILITY ACT OF 2009

BEFORE THE HOUSE JUDICIARY COMMITTEE

JULY 27, 2009

Mr. Chairman and Members of the Committee:

I am pleased to share my thoughts on H.R. 743, The Executive Accountability Act of 2009. It would expressly and unequivocally criminalize intentional material misstatements of fact made by the President for the purpose of eliciting congressional authorization to initiate war. By making such deceit a crime, Congress would also be suggesting that the misconduct would constitute an impeachable offense, i.e., a high crime or misdemeanor within the meaning of Article II, section 4 of the Constitution. If the President knowingly lied about Iran's nuclear warheads, missile delivery vehicles, and intent to use them imminently to kill thousands of American to obtain authority for an Iranian war from Congress, the intentional and material deceit would be punishable under H.R. 743.

I believe the bill is urgent. If it is not enacted, the United States will be perpetually at war on every square inch of the planet; and, the executive branch will become the decisive branch of government and Members of Congress will be reduced to constitutional ink blots. The United States will come to resemble the government of King George III which provoked the American Revolution.

War and peace are the most important matters of any nation. As General William Tecumseh Sherman sermonized, war is hell. It makes murder legal. As Cicero taught, in time of war the laws are silent. Lives and limbs are lost. The proof in part is in the Civil War battlefields, Arlington Cemetery, the Vietnam War Memorial, and its World War II counterparts. Survivors suffer mental trauma. Habeas corpus may be suspended. Arbitrary detentions without accusation or trial flourish. The rule of law succumbs to national security fears. Government secrecy spreads. The people do not know what their government is doing—the first principle of self-government. Dissent or oversight is equated with treason. Power migrates to the President. Government expenditures spiral. He awards military contracts. He makes military assignments and appointments. He is the beneficiary of secrecy, emergency powers, and patriotic sentiments of the people. And war gives the President an opportunity to achieve immortality by transforming the world.

In contrast to the President, neither Members of Congress nor Congress as an institution gain power or fame because of war. Members thus have no incentive to inflate foreign dangers to provoke or justify war.

Accordingly, *the Founding Fathers were unanimous in endowing Congress to the exclusion of the President with the sole power of authorizing the initiation of war.* James Madison, father of the Constitution, sermonized: "The Constitution expressly and exclusively vests in the Legislature the power of declaring a state of war [and] the power of raising armies. A delegation of such powers [to the president] would have struck, not only at the fabric of our Constitution, but at the foundation of all well organized and well checked governments. The separation of the power of declaring war from that of conducting it, is wisely contrived to exclude the danger of its being declared for the sake of its being conducted." As President in 1812, Madison understood that only Congress could authorize war with Great Britain over impressments of U.S. seamen and neutrality. His message to Congress included the following: "Whether the United States shall continue passive under these progressive usurpations, and these accumulating **wrongs**, or, opposing force to force in defence of their national rights, shall commit a just cause into the hands of the Almighty Disposer of events, avoiding all connexions which might entangle it in the contest or views of other Powers, and preserving a constant readiness to concur in an honorable re-establishment of peace and friendship, is a solemn question, which the

Constitution wisely confides to the Legislative Department of the Government. In recommending it to their early deliberations, I am happy in the assurance, that the decision will be worthy of the enlightened and patriotic councils of a virtuous, a free, and a powerful nation.

Madison wrote to Thomas Jefferson: "The constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care vested the question of war in the Legislature."

At the Constitutional Convention, Pierce Butler "was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the nation will support it." Not a single delegate would second Butler's motion.

James Wilson, a future Justice of the United States Supreme Court, lectured the Pennsylvania Ratifying Convention, "This system will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large: this declaration must be made with the concurrence of the House of Representatives: from this circumstance we may draw a certain conclusion that nothing but our interest can draw us into war."

In Federalist 69, Alexander Hamilton, the strongest proponent for a muscular executive among the Founding Fathers, nevertheless understood and approved that the President's war powers "would be nominally the same with that of the King of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the confederacy; while that of the

British king extends to the declaring of war, and to the raising and regulating of fleets and armies; all which by the constitution under consideration would appertain to the Legislature."

Abraham Lincoln, an opponent of the Mexican-American War, understood that there is no limiting principle to unending presidential wars if preemptive wars can be fought without initial authorization from Congress:

"Allow the President to invade a neighboring nation, whenever *he* shall deem it necessary to repel an invasion, and you allow him to do so, *whenever he may choose to say* he deems it necessary for such purpose – and you allow him to make war at pleasure.... Study to see if you can fix *any limit* to his power in this respect, after you have given him so much as you propose. If, to-day, he should choose to say he thinks it necessary to invade Canada, to prevent the British from invading us, how could you stop him? You may say to him, "I see no probability of the British invading us" but he will say to you "be silent; I see it, if you don't."

"The provision of the Constitution giving the war-making power to Congress, was dictated, as I understand it, by the following reasons. Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This, our Convention understood to be the most oppressive of all Kingly oppressions; and they resolved to so frame the Constitution that no one man should hold the power of bringing this oppression upon us. But your view destroys the whole matter, and places our President where kings have always stood."

Lincoln was here echoing the views of John Jay, future Chief Justice of the United States, in *Federalist No. 4:* "[A]bsolute monarchs will often make war when their nations are to get nothing by it, but for the purposes and objects merely personal, such as thirst for military glory, revenge for personal affronts, ambition, or private compacts to aggrandize or support their particular families or partisans. These and a variety of other motives, which affect only the mind of the sovereign, often lead him to engage in wars not sanctified by justice or the voice and interests of his people. But, independent of these inducements to war, which are more prevalent in absolute monarchies, but which well deserve our attention, there are others which affect nations as often as kings."

John Bassett Moore, a towering authority on international law, taught that, "There can hardly be room for doubt that the framers of the constitution, when they vested in Congress the power to declare war, never imagined that they were leaving it to the executive to use the military and naval forces of the United States all over the world for the purpose of actually coercing other nations, occupying their territory, and killing their soldiers and citizens, all according to his own notions of the fitness of things, as long as he refrained from calling his action war or persisted in calling it peace."

President George Washington conducted defensive measures against Indian attacks on his own authority (akin to repelling a sudden invasion), but recognized that offensive measures would require congressional authorization: "The Constitution vests the power of declaring war with Congress," he observed, "therefore no offensive expedition of importance can be undertaken until after they have deliberated upon the subject, and authorized such a measure."

The distinction Washington made between defensive war in response to an actual attack as opposed to preemptive or offensive war in anticipation of an alleged future danger was sound. A President has no ability to deceive Congress or the American people about defensive wars because an attack by the enemy provides indisputable ocular evidence of the danger. Pearl Harbor is the classic example. In contrast, preemptive or offensive wars are suspect because they are prompted by conjectural fears of foreign aggression that can be awakened by false statements by the President about weapons of mass destruction or otherwise.

In sum, it would be preposterous to argue that the Constitution empowers the President to initiate preemptive or offensive war without the express authorization of Congress. It is no answer to say that Congress can curtail or end funding of a war after-the -fact. Funding measures can be vetoed by the President, and the veto can be overridden only by two-thirds majorities in both the House and Senate. The veto power enables one-third of Congress to get the country into war, contrary to the Founding Fathers' intent to create high, not low barriers to accept all the misery and horrors that war brings.

Until the Mexican-American War, the equilibrium of war powers between Congress and the President intended by the Constitution's makers was generally honored. The policy of the United States was brilliantly captured by then Secretary of State John Quincy Adams' July 4, 1821 address:

"America, in the assembly of nations, since her admission among them, has invariably, though often fruitlessly, held forth to them the hand of honest friendship, of equal freedom, of generous reciprocity.

She has uniformly spoken among them, though often to heedless and often to disdainful ears, the language of equal liberty, of equal justice, and of equal rights.

She has, in the lapse of nearly half a century, without a single exception, respected the independence of other nations while asserting and maintaining her own.

She has abstained from interference in the concerns of others, even when conflict has been for principles to which she clings, as to the last vital drop that visits the heart.

She has seen that probably for centuries to come, all the contests of that Aceldama the European world, will be contests of inveterate power, and emerging right.

Wherever the standard of freedom and Independence has been or shall be unfurled, there will her heart, her benedictions and her prayers be.

But she goes not abroad, in search of monsters to destroy.

She is the well-wisher to the freedom and independence of all.

She is the champion and vindicator only of her own.

She will commend the general cause by the countenance of her voice, and the benignant sympathy of her example.

She well knows that by once enlisting under other banners than her own, were they even the banners of foreign independence, she would involve herself beyond the power of extrication, in all the wars of interest and intrigue, of individual avarice, envy, and ambition, which assume the colors and usurp the standard of freedom.

The fundamental maxims of her policy would insensibly change from liberty to force....

She might become the dictatress of the world. She would be no longer the ruler of her own spirit....

[America's] glory is not dominion, but liberty. Her march is the march of the mind. She has a spear and a shield: but the motto upon her shield is, Freedom, Independence, Peace. This has been her Declaration: this has been, as far as her necessary intercourse with the rest of mankind would permit, her practice."

To borrow from Justice Oliver Wendell Holmes, the life of the law has not been logic, it has been experience. And experience teaches the urgency of the Executive Accountability Act. Since President James K. Polk and the Mexican-American War, Presidents have chronically deceived or misrepresented material facts to Congress or the American people to rush the nation into war. As a consequence, countless lives and staggering expenditures have been squandered in making the nation less safe and the American people less free and less captains of the nation's destiny.

President Polk falsely maintained that the Mexican army had killed American soldiers on American soil to justify the Mexican-American War. The war was opposed by then Congressman and former President John Quincy Adams. It provoked then Congressman Abraham Lincoln's spot resolution:

> *Whereas the President of the United States, in his message of May 11th, 1846, has declared that "The Mexican Government not only refused to receive him" (the envoy of the U.S.) "or listen to his propositions, but, after a long continued series of menaces, have at last invaded our territory and shed the blood of our fellow citizens on our own soil."*
>
> *And again, in his message of December 8, 1846 that "We had ample cause of war against Mexico, long before the breaking out of hostilities. But even then we forbore to take redress into our own hands, until Mexico herself became the aggressor by invading our soil in hostile array, and shedding the blood of our citizens."*
>
> *And yet again, in his message of December 7, 1847, that "The Mexican Government refused even to hear the terms of adjustment which he" (our minister of peace) "was authorized to propose; and finally, under wholly unjustifiable pretexts, involved the two countries in war, by invading the territory of the State of Texas, striking the first blow, and shedding the blood of our citizens on our own soil."*
>
> *And whereas this House desires to obtain a full knowledge of all the facts which go to establish whether the particular spot of soil on which the blood of our citizens was so shed, was, or was not, our own soil, at that time; therefe*
>
> *Resolved by the House of Representatives, that the President of the United States be respectfully requested to inform this House –*
>
> *First: Whether the spot of soil on which the blood of our citizens was shed, as in his messages declared, was, or was not, within the territories of Spain, at least from the treaty of 1819 until the Mexican revolution.*
>
> *Second: Whether the spot is, or is not, within the territory which was wrested from Spain, by the Mexican revolution.*
>
> *Third: Whether that spot is, or is not, within a settlement of people, which settlement had existed ever since long before the Texas revolution, until it's inhabitants fled from the approach of the U.S. Army.*
>
> *Fourth: Whether that settlement is, or is not, isolated from any and all other settlements, by the Gulf of Mexico, and the Rio Grande, on the South and West, and by wide uninhabited regions on the North and East.*
>
> *Fifth: Whether the People of that settlement, or a majority of them, of any of them, had ever, previous to the bloodshed, mentioned in his messages, submitted themselves to the government or laws of Texas, or of the United States, by consent, or by compulsion, either by accepting office, or voting at elections, or paying taxes, or serving on juries, or having process served upon them, or in any other way.*

*Sixth: Whether the People of that settlement, did, or did not, flee from the approach of the United States Army, leaving unprotected their homes and their growing crops, before the blood was shed, as in his messages stated; and whether the first bloods so shed , was, or was not shed, within the inclosure of the People, or some of them, who had thus fled from it.*

*Seventh: Whether our citizens, whose blood was shed, as in his messages declared, were, or were not, at that time, armed officers, and soldiers, sent into that settlement, by the military order of the President through the Secretary of War – and*

*Eighth: Whether the military force of the United States, including those citizens, was, or was not, so sent into that settlement, after Genl. Taylor had, more than once, intimated to the War Department that, in his opinion, no such movement was necessary to the defence or protection of Texas"*

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The Spanish American War of 1898 was fueled by misleading or exaggerated statements or insinuations by President McKinley that the Spanish government was responsible for blowing up the USS Maine in Havana harbor with a death toll of 258.

In the run-up to the United States entry into World War I, President Woodrow Wilson deceived Congress and the American people by complaining that the *Lusitania* sunk by German submarines in 1915 was carrying only passengers when in fact it was also transporting munitions of war.

In an attempt to hurry the United States into World War II, President Franklin D. Roosevelt, on September 11, 1941, prevaricated to Congress and the American people that the USS Greer had been the subject of an unprovoked Nazi submarine attack. In fact, the USS Greer had been hunting the Nazi submarine, which responded in self-defense, according to Admiral Harold Stark, Chief of Naval Operations. President Roosevelt's cavalier attitude towards the truth in wartime was corroborated be the following confession: "You know I am a juggler, and I never let my right hand know what my left hand does...I may have one policy for Europe and one diametrically opposite for North and South America. I may be entirely inconsistent, and furthermore I am perfectly willing to mislead and tell untruths if it will help win the war [May 15, 1942]."

President Harry Truman euphemistically characterized the Korean War as a "police action," although more than 36,000 American soldiers perished over a three-year war that concluded with an armistice in 1953. President Eisenhower originated the idea of the "Domino Theory" in Southeast Asia, that was summoned by Presidents Kennedy and Johnson to enlarge a United States military presence in South Vietnam. President Eisenhower first coined this phrase on April 7, 1954 during a Presidential Press Conference. After being asked by Robert Richards of Copley Press to explain the strategic importance of Indochina, he exclaimed:

*"You have, of course, both the specific and the general when you talk about such things...*

*Finally, you have broader considerations that might follow what you would call the "falling domino" principle. You have row of dominoes set up, you knock over the first one, and what will happen to the last one is the certainty that it will go over very quickly. So, you could have a beginning of a disintegration that would have the most profound influences...Then with respect to more people passing under this domination. Asia, after all, has already lost some 450 million of its peoples to the Communist dictatorship, and we simply can't afford greater losses.*

*But when we come to the possible sequence of events, the loss of Indochina, of Burma, of Thailand, of the Peninsula, and Indonesia following, now you begin to talk about areas that not only multiply the disadvantages that you would suffer through loss of materials, sources of materials, but now you are talking about millions and millions and millions of people*

*Finally, the geographical position achieved thereby does many things. It turns the so-called island defensive chain of Japan, Formosa, of the Philippines and to the southward; it moves in to threaten Australia and New Zealand.*

*It takes away, in its economic aspects, that region that Japan must have as a trading area or Japan, in turn, will have only one place in the world to go – that is, toward the Communist areas in order to live.*

*So, the possible consequences of the loss are just incalculable to the free world."*

Then came the false bomber and missile gap claims of Presidents Eisenhower and presidential candidate Kennedy in the 1950s and the 1960 presidential campaign.

The Gulf of Tonkin Resolution was built on false assertions, whether witting or unwitting, by President Lyndon Baines Johnson that North Vietnam's torpedo boats had fired missiles at the USS Mattox and the USS Turner Joy on August 2 and 4, 1964, without provocation. In fact, the United States had provoked the attack by using a navy ship to conduct espionage and to shell the North Vietnamese coast. Further, North Vietnam had not targeted the USS Turner Joy for a missile attack. The reports of the same were spurious. When the Vietnam War ended in a debacle with the phony Paris Peace Accords of 1973, more than 55,000 American soldiers had died without purpose.

In 1965, President Johnson invaded the Dominican Republic with 24, 000 thousand Americans troops. He justified the United States intervention with the false statement that rebels in the Dominican Republic were controlled by Cuban Communist revolutionaries.

In 1969, President Nixon deceived Congress with his secret bombing of Cambodia in the Vietnam War.

President William Jefferson Clinton justified war in Bosnia by dramatically inflating the danger of the Balkans in flame ala Sarajevo and World War I absent United States military intervention. In a televised address, the President maintained:

> "Securing peace in Bosnia will also help to build a free and stable Europe. Bosnia lies at the very heart of Europe, next door to many of its fragile new democracies

> and some of our closest allies. Generations of Americans have understood that Europe's freedom and Europe's stability is vital to our own national security. That's why we fought two wars in Europe,; that's why we launched the Marshall Plan to restore Europe; that's why we created NATO and waged the Cold War, and that's why we must help the nations of Europe to end their worst nightmare since World War II now…
>
> If we're not there, NATO will not be there. The peace will collapse; the war will reignite; the slaughter of innocents will begin again. A conflict that already has claimed so many victims could spread like poison throughout the region, eat away at Europe's stability and erode our partnership with our European allies…"

In 2003, President George W. Bush withheld evidence from Congress and the American people undermining his emphatic claim that Saddam possessed weapons of mass destruction. According to Barton Gellman in *Angler,* then House Majority Leader Dick Armey was deceived by Cheney about Saddam's miniaturization of nuclear weapons that could be delivered with ground personnel—a deception that flipped the Majority Leader in favor of the Iraqi War Resolution. Congress then passed the bill, which unconstitutionally delegated to the President the choice whether to initiate war against Iraq. That decision has been responsible for in excess of 4,000 American deaths for a purpose yet to be articulated.

Long experience thus demonstrates the urgency of deterring the President from misleading Congress about foreign dangers and war by the enactment of the Executive Accountability Act. The problem it addresses is not with Republican or Democratic Presidents. It is a problem of the institution of the presidency and the craving for power and fame and remembrance. The bill is not targeted on former President Bush or Vice President Cheney. The law would have no retroactive effect, which in any event would be proscribed by the

Constitution's ex post facto law. It is arguable that the false statements prohibition, 18 U.S.C. 1001, might overlap with the Executive Accountability Act. But when the criminal law addresses presidential conduct, it should speak with absolute clarity. The demand of fair warning is at its zenith when the legality of presidential action is at stake.

It is a dreadful commentary on the state of the American political culture and the ascendancy of the psychology of Empire in the White House that the Executive Accountability Act is needed. In a healthy political culture, no president would dare dissimulate to rush the nation into war with all its grisly consequences. Sober experience, however, has taught that neither Congress nor the American people can trust the President to be honest about national security dangers. The temptation to exaggerate to gain power, secrecy, and patriotic support by compromising truth is irresistible. But the knowledge that the President may be impeached or prosecuted for deceiving Congress to embroil the nation in war will concentrate his mind wonderfully on telling the truth. Therein lies the remedy for perpetual and global war.

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Mr. SCOTT. Thank you.
Mr. Cohn.

## TESTIMONY OF JONATHAN F. COHN, PARTNER, SIDLEY AND AUSTIN, WASHINGTON, DC

Mr. COHN. Thank you, Mr. Chairman and Members of the Subcommittee.

Like other members of this panel, I suspect pretty much every single person in this room, I believe that communications between the executive branch and Congress should be truthful and candid always and especially in the context when the country makes the grave decision to send its children off to war.

But, that said, I remain unconvinced that H.R. 743 is an appropriate way to mandate truthfulness and improve communications between the political branches. As an initial matter, the bill's effect would be constitutionally limited in three significant respects; and even when permitted by the Constitution the bill will be more likely to inhibit interbranch communication than to promote it.

I will begin by addressing the constitutional concerns. Although H.R. 743 is not unconstitutional on its face, it could be unconstitutional in a few of its applications; and courts would be likely to construe the statute along those lines.

First, under the ex post facto clause, the bill cannot apply retroactively, so it could not be used to prosecute anyone in any previous Administration for the Iraq war or otherwise.

Second, consistent with the history of open and direct communications between the White House and the American people, courts likely will read the bill to cover only direct communications by executive branch officials to Congress. The President has inherent authority to address his national constituency; and in light of the cannon of constitutional avoidance the bill likely would not reach communications with the American people or the press, even though such statements, theoretically, at least, could have the indirect effect of influencing Congress' decision to authorize the use of force.

Third, the bill's prohibition on concealing a material fact from Congress likely will be found unconstitutional as applied to the mere nondisclosure of classified information by executive branch officials. The Supreme Court has recognized that the President has power as commander in chief to classify and control access to national security information. So, again, courts are likely to read limitations into the bill if it were enacted.

Now, as for the many circumstances in which the bill would not raise constitutional concerns, I am still unable to support it for pragmatic reasons. Although I share the desire to promote truth telling in Washington, this bill, in my view, is more likely to impede interbranch cooperation than to facilitate it. I am foremost concerned with the potential chilling effect that the bill could have on interbranch communications. The fear of potential criminal prosecution would exact its toll on executive branch officials.

As the Supreme Court has recognized, a mere threat of monetary liability deters an official's willingness to execute his office with decisiveness and also discourages able citizens from accepting public office in the first place. These concerns, needless to say, are all the more significant when the penalty is not just money damages but 10 years in Federal prison.

And here is the problem. In a rapidly developing foreign crisis you often just don't have complete information, and you simply do the best with what you have at the time you have to make that decision. But if more information subsequently comes to light suggesting that an official previously should have known his statement was false, it may be difficult for him to disprove the allegations and the inferences against him. It is the Monday morning quarterbacking that Congressman Poe alluded to earlier. That is the concern.

And this is especially true if the prior Administration's position has become unpopular and a new Administration is more interested in attacking its political enemies than addressing the country's needs. Even if the investigation is eventually dropped or the official is ultimately exonerated, he will have had to endure the expense and disruption of defending against the public accusation.

The results are not ones that Congress should encourage. For instance, H.R. 743 would create an incentive for the White House not to seek authorization for the use of force in the first place. The degree to which congressional approval is a necessary condition for war making is a controversial and unresolved debate in Washington for many years, and there is no need to rehash that issue today. Suffice it to say that, to the extent that executive branch officials are cognizant of their criminal exposure in the course of lobbying Congress to approve the use of force, they, the officials, will be correspondingly less likely to bring Congress on board as a full partner in the decision to deploy troops. And that decision might be viewed as unilateral, but, even if it is, it is not good for Congress; it is not good for the American people. That is not something this Congress should encourage.

Moreover, Congress already has the means to protect itself and to gather truthful information before authorizing the use of force. This is something which I think some people might have overlooked. If Congress wants to ensure that executive branch officials do not mislead anyone in the legislative branch, Congress can simply take testimony under oath or conduct a formal investigation or review. Any misstatements in those contexts could give rise to criminal punishment under the perjury statute, the False Statements Act, and possibly the obstruction of justice statute.

There is just little or no need to extend criminal liability to the many informal interbranch communications that occur on a daily basis in real time, an extension which may well inhibit instead of promote the flow of information from the Administration to Congress.

If I may, there is just one final comment I would like to make on the bill and its overarching focus and not on any particular provision. Unlike many nations, Mr. Chairman, the United States has been blessed with a propensity to look forward instead of looking backward as a polity. From the first peaceful transition of power to the Jeffersonian Democrats by the Federalists, to the efforts to stitch together this great Nation after the Civil War, to the decision to pardon a disgraced President, this country has always been well-served by moving forward instead of dwelling on past grievances.

If a President or his Administration is perceived to have misled Congress or the public into war, his opponents are very capable of extracting a political price at the ballot box. For two reasons, this approach is far superior to a criminal investigation or prosecution. First, elections distribute responsibility to the winners and not retribution to the vanquished; and, second, courts are ill-suited to resolve controversies regarding America's foreign policy.

H.R. 743 would invite a judge and jury often lacking clear and reviewable standards to decide what facts were material to Congress' decision as well as what facts were objectively false and who knew what. Punishing the ousted regime may be a preferred course of certain banana republics of the past, but, with respect, this should not be the United States' path in the 21st century.

I look forward to answering any questions you may have.

[The prepared statement of Mr. Cohn follows:]

PREPARED STATEMENT OF JONATHAN F. COHN

**Testimony of Jonathan F. Cohn[1] Before the House Judiciary Committee, Subcommittee on Crime, Terrorism, and Homeland Security**

**H.R. 743: Executive Accountability Act of 2009**

**July 27, 2009**

Mr. Chairman, Ranking Member Gohmert, and other members of the subcommittee, thank you for inviting me to offer my views on H.R. 743, the Executive Accountability Act.

Like other members of today's panel, I believe that communications between the executive branch and Congress should be truthful and candid. And I concur that Congress's need for complete and accurate information is particularly important when the country makes the grave decision to send its troops into harm's way. I also recognize the fundamental distinction between lying and mere nondisclosure that H.R. 743 appears to embrace. If an executive branch official is asked for classified information outside the established channels for sharing it with congressional committees, he should simply decline to provide it. He should not affirmatively mislead Congress as it wields its constitutional responsibilities.

That said, I am unconvinced that H.R. 743 is an appropriate way to mandate truthfulness and improve communications between the political branches. As an initial matter, the bill's effect would be constitutionally limited in three significant ways. *First*, the bill could not apply retroactively, so it could not be used to prosecute anyone in any previous administration – for the Iraq war or otherwise. *Second*, H.R. 743 likely would not be construed to cover statements that executive officials make to the press or the public, rather than to Congress, even if those statements indirectly affected congressional decisionmaking. And *third*, the bill could not be used to prosecute officials who merely decline to disclose classified information.

Further, even when permitted by the Constitution, using criminal prosecutions to enforce truth-telling between the political branches outside of a formal investigation or review may have unintended policy consequences. Even the most honest public servants must worry about damage to their reputations and livelihoods resulting from a criminal investigation. Such concerns are especially

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likely to arise when laws are ambiguous and lend themselves to subjective determinations of knowledge or intent in a politically charged environment.

At least two negative repercussions could flow from H.R. 743's expansion of criminal liability. *First,* the bill could distort the flow of information between the executive and legislative branches. It might discourage the White House from speaking to Congress as frequently as it otherwise would, and perhaps from seeking congressional authorization for the use of force at all. And when the President *does* seek authorization, H.R. 743 could lead officials to overdisclose sensitive information in order to avoid an investigation into whether the officials "conceal[ed]" a "material fact." *Second,* the bill practically invites prosecutors and courts to second-guess an ex-President's foreign policy judgments that have proved ill-fated or unpopular. Revisiting an administration's message and mistakes in the courtroom, rather than at the ballot box, would harm this country's healthy tradition of looking forward for political solutions, rather than backward for political retribution.

**Constitutional Limitations on H.R. 743**

H.R. 743 is not constitutionally objectionable on its face. It re-extends the prohibitions of 18 U.S.C. § 1001, also known as the False Statements Act, to communications between the executive branch and Congress regarding authorization for the use of force. For 40 years, a previous version of this law was construed to cover all statements made to the legislative branch on any topic by any party, including executive branch officials. *See United States v. Hubbard*, 514 U.S. 695 (1995), *United States v. Bramblett*, 348 U.S. 503 (1955). Federal courts upheld its validity in prosecutions stemming from the Iran-Contra scandal. *See United States v. Poindexter*, 951 F.2d 369 (D.C. Cir. 1991), *United States v. North*, 708 F. Supp. 380 (D.D.C. 1988). Nevertheless, H.R. 743 sits at the nexus of criminal law, separation-of-powers principles, and the communication of political ideas – a place where constitutional considerations loom large. Therefore, even though this legislation is not facially unconstitutional, courts would likely limit its application in three ways.

1. Retroactive Effect – Since 1798, the Supreme Court has interpreted the Constitution's Ex Post Facto Clause to prevent Congress from criminalizing conduct after the fact. *See Calder v. Bull,* 3 U.S. (3 Dall.) 386, 390 (1798). It cannot punish activity that was lawful at the time, increase the punishment for activity that was already illegal, or make it easier for prosecutors to prove a previously established crime. *See Rogers v. Tennessee*, 532 U.S. 451, 456 (2001). Neither this bill nor any other could authorize the prosecution of executive branch officials for statements regarding authorization of the use of force in Iraq or Afghanistan during the last Administration or, for that matter, in Bosnia during the Clinton Administration. If enacted, H.R. 743 would only cover future

communications made to Congress by President Obama, subsequent presidents, and their staffs.

2. Communications to the Press and Public – Courts likely will read H.R. 743 to cover only direct communications by executive branch officials to Congress. As construed, the bill would not reach communications with the American people, the press, or foreign governments, even though such statements potentially could have the indirect effect of influencing Congress's decision to authorize the use of force. The False Statements Act, on which H.R. 743 is modeled, extended only to statements made to the government. *See Bramblett*, 348 U.S. 503. This was in keeping with the history of open and direct communication between the White House and the American people, dating back at least to George Washington's Farewell Address. No court is likely to interrupt this unbroken practice, which has grown so essential to our constitutional structure, by allowing the threat of criminal investigation and prosecution to hang over the executive branch when it speaks to the public or foreign officials. *Cf. Youngstown Steel Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610–11 (1952) (Frankfurter, J., concurring).

And this presidential "power to persuade" is not merely a historical gloss. Richard E. Neustadt, *Presidential Power and the Modern Presidents* 10–11, 30–32 (1990). The Constitution itself assigns the President inherent or implied authority to address his national constituency. *Cf. INS v. Chadha*, 462 U.S. 919, 948 (1983), *Nixon v. Fitzgerald*, 457 U.S. 731, 749 (1982). Given the President's explicit constitutional authority to address the Congress, U.S. Const., Art. II, § 2, cl. 1 (Recommendations Clause), members of his administration, *id.* (Opinion in Writing Clause), and foreign governments, *id.*, Art. II, § 3 (Receive Ambassadors Clause), there surely exists implied authority to speak directly to the people. Congress cannot limit this authority through the threat of future prosecution without raising serious constitutional questions. *See* Peter W. Morgan, *The Undefined Crime of Lying to Congress: Ethics Reform and the Rule of Law*, 86 Nw. U. L. Rev. 177, 224–26 (1992) (noting separation of powers concerns inherent in criminalization of executive officials' speech); *cf.* William Van Alstyne, *Symposium, Foreign Affairs and the Constitution: The Roles of Congress, the President, and the Courts*, 43 U. Miami L. Rev. 17, 56–57 (1988) (conceding, in the course of defending congressional prerogative in foreign affairs, that "the Constitution, by its design, accepts" the "definite risk" that the President could mislead Congress).

The courts are likely to construe H.R. 743 to avoid these constitutional issues. It is well-established that, "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the [Supreme] Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. and Const. Trades Council*, 485 U.S. 568, 575 (1988). This is especially true in the criminal context, where "[t]he rule of lenity requires ambiguous . . . laws to be interpreted in favor of the defendants subjected to them." *United States v. Santos*, 128 S.Ct. 2020, 2025 (2008). As drafted, the bill could certainly be read as applying only to direct communications by executive branch officials to Congress, especially in light of the express requirement that the communications be "for the purpose of influencing a member of the Congress." Nothing in the bill suggests that this interpretation would be "plainly contrary to the intent of Congress," and thus courts would presumably adopt it, consistent with *DeBartolo* and *Santos*.

3. Concealment of Classified Information – H.R. 743's prohibition on "conceal[ing] . . . a material fact" from Congress likely would be found unconstitutional as applied to the nondisclosure of classified information by executive branch officials. The Supreme Court has recognized that the President has authority, as Commander in Chief, "to classify and control access to information bearing on national security" that "flows primarily from [the] constitutional investment of power in the President and exists quite apart from any explicit congressional grant." *Navy v. Egan*, 484 U.S. 518, 527–29 (1988); *see also Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948) (recognizing executive authority to act on secret information free of judicial intervention). To be sure, Congress's own constitutional authority in military and foreign affairs creates a corresponding need for classified information to inform the legislative process. But established practices, negotiated between the political branches, exist for communicating such data in a limited and secure way – for instance, through the Intelligence Committees – and the refusal of an executive branch official to reveal classified information outside those channels would accord with the President's prerogatives recognized in *Egan*.

As mentioned above, an official's refusal to answer a question that calls for classified information is preferable to a misleading answer. And if a nonanswer is necessary to safeguard classified data, a court is likely to excuse such nondisclosure on constitutional grounds, notwithstanding the prohibition on "conceal[ment]" in H.R. 743. This construction of H.R. 743 is made even more likely by the criminal law's rule of lenity and the canon of constitutional avoidance.

**Policy Repercussions of Increasing the Threat of Prosecuting Executive Branch Officials**

Despite the constitutional limitations explained above, H.R. 743 would implicate the majority of communications between the executive and legislative branches regarding the authorization of the use of force. The question thus becomes whether the bill, as so construed, should be enacted. For at least two reasons, it should not. Although I share the desire to promote truth-telling in Washington, H.R. 743 is more likely to impede interbranch cooperation than to facilitate it.

1. <u>Chilling Effect on Interbranch Communications and Disincentive to Seek Authorization</u> – H.R. 743 criminalizes only objectively false communications that an official makes knowingly and willfully. These limitations do much to protect a public servant, acting in good faith, from prosecution for innocent statements that later prove false. But they do not eliminate the fear of a criminal investigation or prosecution that could be brought by a future administration – a fear that can be expected to color communications between executive officials and Congress regarding sensitive and uncertain matters of national security.

If data turns out to be false, the official would have to defend against a number of subjective inquiries in the course of an investigation or prosecution, including: Did the official know the statement was false? Was the statement made to "influenc[e] a member of Congress to authorize the use of force"? Was it "material" to Congress's decision? What other motives did the official have? Moreover, it often may be unclear who actually "made" a false statement on behalf of the administration. Is a cabinet secretary absolved of H.R. 743 liability by sending a staffer to testify in his place? Does the willfulness of the secretary or of the staffer matter? If multiple officials contributed to a public announcement, as generally will be the case, prosecutors would enjoy enormous discretion regarding whom to charge.

In the context of a rapidly developing foreign crisis and incomplete information, these questions could be very difficult to answer; even more so as time passes. And if information comes to light suggesting that the official should have known that his statement was false, it may be difficult for him to disprove the allegations and inferences against him. This is especially true if the prior administration's position has become unpopular and the new administration is more interested in attacking its political enemies than addressing the country's needs. Even if the investigation is eventually dropped or the official is ultimately exonerated, he will have had to endure the expense and disruption of defending against the public accusation.

The fear of potential criminal prosecution will exact its toll on executive branch officials. Indeed, the Supreme Court has recognized that the threat of mere monetary liability deters an official's "willingness to execute his office with the decisiveness and the judgment required by the public good," *Scheuer v. Rhodes*, 416 U.S. 232, 239-40 (1974), and discourages "able citizens from acceptance of public office," *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). These concerns are all the more significant when the penalty is not just money damages but ten years in federal prison.

The results are not ones that Congress should encourage. For instance, H.R. 743 would create an incentive for the White House not to seek authorization for the use of force in the first place. The degree to which congressional approval is a necessary condition for war-making is a controversial and unresolved debate in Washington, and there is no need to rehash it today. Suffice it to say, to the extent that executive branch officials are cognizant of their criminal exposure in the course of lobbying Congress to approve the use of force, they will be correspondingly less likely – or at least less eager – to bring Congress on board as a full partner in the decision to deploy troops.

Moreover, when the administration *does* communicate with Congress, staffers fearful of punishment for concealing material information may convey too much information. Aside from the obvious risk to confidentiality when information is disseminated broadly, Congress's job could grow more difficult and inefficient as it is forced to separate the data that the executive believes is actually material from that which is immaterial but offered only to avoid the risk of prosecution.

Finally, Congress already has the means to protect itself and to gather truthful information before authorizing the use of force. If Congress wants to ensure that executive branch officials do not mislead anyone in the legislative branch, Congress can take testimony under oath or conduct an "investigation or review," as contemplated by § 1001(c)(2). Any misstatements in those contexts could give rise to criminal punishment under the perjury statute, 18 U.S.C. § 1621, the False Statements Act, id. § 1001, and possibly the obstruction of justice statute, id. § 1505. There is thus little or no need to extend criminal liability to the many informal interbranch communications that occur on a daily basis in real time – an extension which may well inhibit rather than improve the flow of information from the administration to Congress.

Congress recognized this very risk when it passed the current version of the False Statements Act in 1996. This Committee observed that a "broad application" of 18 U.S.C. § 1001 would create an "intimidating atmosphere" and "undermine the fact-gathering process that is so indispensable to the legislative process." For this reason, the Committee inserted into the statute the "legislative function exception" that protects congressional advocacy, outside the context of an official investigation, from false statement liability today. *See* H.R. Rep. 104-680, at 3–5 (1996). And the House Report explicitly noted that the perjury, obstruction, and contempt of Congress statutes "continue[d] to provide possible means of punishing those who would willfully mislead Congress." *Id.* Accordingly, Congress stopped short of enacting a statute that would thwart interbranch communications like H.R. 743. With respect, Congress should not now disrupt the balance that it previously struck.

2. <u>Invitation to Look to the Past and the Courtroom, Not Ahead to the Ballot Box</u> – My final comment on H.R. 743 relates to its overarching focus rather than to any single provision. Unlike many nations, the United States has been blessed with a propensity to look forward rather than backward as a polity. From the first

peaceful transition of power to the Jeffersonian Democrats by the Federalists, to the efforts to stitch together a nation torn by Civil War, to the decision to pardon a disgraced former president, this country has been well-served by moving forward rather than dwelling on past grievances. This is especially important with respect to foreign policy, given the need for the leaders of all political parties to speak with one voice abroad.

If a President or his administration is perceived to have misled Congress or the public into war, his opponents are very capable of extracting a political price at the ballot box. For two reasons, this approach is far superior to a resort to the courts. First, elections distribute responsibility to the winners rather than retribution to the vanquished. Rather than focusing the nation's energy on the political wounds of the past, its attention shifts to overcoming substantive obstacles as we move forward. Second, courts are ill-suited to resolve controversies regarding American foreign policy. *See, e.g.*, *Chicago & Southern Air Lines*, 333 U.S. at 111. H.R. 743 would invite a judge and jury, often lacking clear and reviewable standards, to decide what facts were objectively false, what facts were known to be false, and what facts were material to Congress's decision. This may be the preferred course in the banana republics of the past, but it should not be the United States's path in the 21st century.

Thank you, Mr. Chairman and Ranking Member Gohmert. Although I do not support the changes envisioned by H.R. 743, I share the desire to improve honesty in government, and I look forward to answering any questions you may have.



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Mr. SCOTT. Thank you.

I want to thank all of our witnesses.

We will now recognize ourselves under the 5-minute rule for questions.

Mr. Fein, Mr. Cohn indicated that this could not be applied retroactively. There is no question about retroactive application. It cannot be——

Mr. FEIN. That is correct. And, of course, the bill doesn't purport to apply retroactively, so that has nothing to do with the statute.

Mr. SCOTT. Now, he also kind of alluded to the fact that Congress has so messed up its war powers constitutional responsibilities. You used the term—the term of the bill is "influence a Member of Congress to authorize the use of the Armed Forces of the United States." That could be like war, but it could be the use of the armed services. Is that a term of art that we kind of know what it is?

Mr. FEIN. I think it means authorize the Armed Forces to take us into a conflict where it becomes legal to murder people because we are at a state of war with a foreign country.

Mr. SCOTT. It has been used in the bill as if it is a resolution kind of like going to war and not just using the Armed Forces for any kind of military operation that may not be——

Mr. FEIN. Well, I think the issue arises for this reason, Mr. Chairman. In the past when Congress has appropriated money or authorized the use of the Armed Forces, they haven't used the same language. Earlier times, there was a declaration of war. Sometimes they haven't used those magic words. I think the key here is whether or not the authorization is intended to see them involved in conflict with a foreign country. Now we have organizations as well, if you call them terrorist organizations.

Mr. SCOTT. But the sense is that you are talking about an armed conflict against another country.

Mr. FEIN. Yes. Although I think the reason why it has to be broader is because, of course, we are so-called at war with a tactic for the first time in history. So we don't want to be in a situation where the President, you know, he initiates war and says this doesn't apply because now we are fighting the sister of al-Qaeda or whatever.

Mr. SCOTT. The bill uses the term falsifies, conceals, or covers up. Would it be a violation to selectively present the case and leave out alternative views?

Mr. FEIN. Of course it would. And that is the way in which—you know, even our securities laws are that way. To fail to make a statement or to conceal it in light of the context, which makes the statement in total misleading.

And, Mr. Chairman, I want to draw an analogy to a situation in the law, the Fifth Amendment privilege against self-incrimination. You can't go down a road and waive your privilege and start talking about a subject and then stop in midstream and say I don't want to answer any more questions. Once you open it up, you have to tell everything. Because you can readily see how you can totally skew the true facts by just telling half of the story.

So if a President does something like this, he says, I have got one informant who has told me that Iran has weapons of—they have got a nuclear arsenal that they are just about ready to launch against Israel in the next 5 minutes. He also has 25 other informants who tell him this informant is a liar and we have absolute proof that that is not true. And the President comes and says, well, I am just telling you what the one informant says and conceals the other 25 informants that discredits him, that in my judgment is a knowing lie and certainly would fall within the meaning of this statute.

Mr. SCOTT. Now, the present law restricts the application of the law, not the bill but the present law, to cases, quote, pursuant to the authority of a Committee.

Mr. FEIN. Yes. It doesn't apply to the situations where the President may make statements to Congress, a Committee, an endeavor, a legislative endeavor. And I know the statement was made that perhaps this couldn't be applied constitutionally to statements that were made maybe to Congress and the American people at the same time, the President goes on television, because that is a free-speech issue.

Well, I think that is clearly wrong. Remember, this is limited to statements that the President knows is false. It is not a false statement of an opinion; it is a false statement of fact. You can criminalize that kind of speech in other contexts. The greatest compulsion for criminalizing it, when you are putting it in context where men and women may go off to die for the country on a false premise.

Mr. SCOTT. Well, it not only has to be knowingly and willfully making the false statements, but it has to be, in the bill at the bottom of page 2, for the purpose of influencing.

Mr. FEIN. Yes.

Mr. SCOTT. Now, there the idea that this would be a special situation because people are going to war, are there other situations—and, obviously, life and death are involved. Are there other situations where the executive branch may be making false statements that would endanger people's lives like the FDA or other areas where the public is endangered because of false statements?

Mr. FEIN. I haven't focused on that, Mr. Chairman. There may well be. I think the urgency of this statute is because the consequences for the American people—just go to the Vietnam Wall—are so much greater. There may be reasons to extend the idea to other agencies as well.

Mr. SCOTT. Let me just ask one other question so we don't have to have a final round.

There has been the suggestion that the present law doesn't apply to the executive branch, although the present law says, except as otherwise provided in this section, whoever in any manner—why would anybody—what difference would it make what branch of government or whatever your station in life—why would you not be covered by whoever?

Mr. FEIN. I think the Supreme Court has made it clear that, in interpreting statutes, they are very loathe to apply obligations on the President of the United States, that particular office, in interpreting other statutes, Freedom of Information Act, Privacy Act, et cetera; and it is something what you might call like a clear statement rule that is used in Federalism kind of cases.

And it is arguable to say, well, it is such a grave step, for the reasons that Mr. Cohn has suggested, to perhaps penalize a President for making knowing false statements in these circumstances. We won't impute to Congress an intent to cover it unless it does so very explicitly. And I am sure probably the legislative history of this statute doesn't mention the President in this context, so a court might try to avoid a tough question by a narrow construction.

Mr. SCOTT. Thank you.

Mr. Poe.

Mr. POE. Thank you, Mr. Chairman.

Mr. Cohn, I have a few questions for all of you, but I will try to be brief and your answers to the point.

You said that 743 is not the answer. If 743 is not the answer for this problem, what is?

Mr. COHN. Well, with respect, I don't think that this is a problem that calls for any legislation. But if the problem is the one that Mr. Fein and Mr. Jones identified earlier, that the current law 1001 does not cover the President, if that is the only problem that this Subcommittee wants to address, the easy solution is simply to clarify 1001 to make clear the President is covered. There is no reason to enact H.R. 743, which does much more, namely, cover the hundreds if not thousands of daily and formal communications that are made during a crisis between the executive branch and the Congress.

Mr. POE. Do you think that 743 would have some type of chilling effect of communication between the executive branch and the legislative branch as a practical matter or not?

Mr. COHN. Absolutely. Look, the Supreme Court has recognized that mere monetary liability—the mere threat of monetary liability would inhibit executive officials from performing their duties diligently and discouraging individuals from joining public service in the first place. Those concerns are all the more severe when you are talking about 10 years in Federal prison.

And, look, I mean, the reality is people do the best they can with the information they have; and crises occur in short periods of time. You don't have the luxury of being a Monday morning quarterback. And individuals who are doing their best, operating in good faith might worry, look, next year, even next month, new information might come to light that shows I should have done something differently, but I am still doing the best I can right now. Not wanting to face the prospect of criminal liability, he might not do anything. He might not make the right decision, worrying about the threat of criminal prosecution. There definitely is a chilling effect.

Mr. POE. Dr. Fisher, do you want to weigh in on that?

Mr. FISHER. Yes. Right now, 1001 applies to executive officials; and I haven't heard the argument that that chills their official duties in the executive branch.

And if I heard Mr. Cohn correctly, you would say that one of the solutions would be to apply 1001 expressly to the President, and you would have the same chilling effect there. So I don't think anyone coming before a Committee or to the public should have any doubt that the information that they are giving is in good faith, accurate, and reliable; and there would be no question about them knowingly or willfully misleading Congress or the public. So I think there is a chilling—a proper chilling effect that you speak truthfully, and I think Mr. Cohn has said that that is the proper standard.

Mr. COHN. May I respond to that, very quickly?

Mr. POE. All right, quickly.

Mr. COHN. There is one very fundamental difference between 1001 and H.R. 443, and this is something I believe that Dr. Fisher has overlooked. 1001 covers investigations or reviews and sort of administrative matters. It does not cover the hundreds or thousands of informal communications that occur all the time in crises.

Think of the week after 9/11, think of all the communications that occurred informally between Congress and the executive branch. Those informal communications or those phone calls are not covered by 1001. They would be covered by H.R. 743, and that is a problem. People in the executive branch are not going to want to pick up the phone if they think every phone call could subject them to criminal liability. You would have ultimately, because of the chilling effect, only one line of communication, the formal investigations review. You would lose that second channel of intelligence information because of the chilling effect. 1001 does not cover that; H.R. 743 does.

Mr. POE. I think that we all want more truth in Washington, D.C. I think even Congress can handle it. So how do we get there from here? We want to know the facts. Congress wants to know the facts so we can pass it on to the American public, especially when it comes to American troops going somewhere and having the possibility of dying.

So how do we promote that? How do we get there?

Mr. COHN. Well, I think you can't promote basic moral and ethical tenets like that through legislation. I think the answer is for public officials in both Congress and the executive branch to follow what they learned in kindergarten and just do the right thing and tell the right thing and not depend on critical statutes to plot the way for them. That is not the answer.

Mr. POE. Should we apply this to all communication from the President? In other words, some other issue that doesn't have anything to do with troops, should we apply that to everything the President tells Congress?

Mr. COHN. If Congress were to enact this legislation—and, with respect, I don't think it should—but if Congress disagrees and wants to enact this legislation because it thinks that criminal punishment is the answer, if it thinks that criminal punishment is the way to get more truth telling, and I disagree with that, but if Congress thinks criminal punishment is a way to get the truth, there is no reason to stop at lying in the context of getting authorization under for use of force. Why not extend this to every other context, every other executive branch?

Just take one example. Think of health care. I don't know if anyone is misspeaking in the context of health care, but what if, for example, a proposal did not cost $1 trillion, but rather $4 trillion or $5 trillion, as a result of which it could saddle this country for generations with enormous debt. It could perhaps discourage doctors from remaining in medicine. As a result of that, patients are dying outside hospitals. That is a problem.

I think if this Congress thinks that legislation is the way to get more truth telling, it should not stop at force authorization, but should extend this across the board to health care and everything else. But I for one do not think that legislation is the way to get at the truth.

Mr. POE. Thank you, Mr. Chairman. I yield back my time.

Mr. SCOTT. Mr. Gohmert.

Mr. GOHMERT. Thank you, Chairman Scott. I am sorry I was late. I had been reviewing information in preparation for the hearing, but my plane was late due to weather. I see my friend Walter Jones sitting back here. And I know that there is not a better heart in all of Congress, anybody who has the best interest of the country, more than my friend, Mr. Jones. But I do have concerns about this bill and I keep coming back to the stuff that really seem to give rise to this.

The Bush administration aired the perception of arrogance and made some bad decisions along the way. The bailout, in my opinion, for one thing. They also took the approach that history will be kind to us down the road, so they quit defending themselves.

Not many people noticed July of 2008 that 550 metric tons of yellowcake uranium were removed from Iraq. We had hearings in this room. And I think one of the most deceptive people I have seen testify in this room in my 4½ years in Congress was a man named Joseph Wilson. Of course, he had said before Valerie had nothing to do with the matter. She definitely had not proposed that I make the trip. And when we finally got her e-mail, it says, My husband has a good relationship with the PM and the Foreign Minister, not to mention lots of French contacts. And she said, My husband is willing to help. I mean she kept pushing, and we finally got her secret memo. She misrepresented things to the Senate.

I kept going back to his article he wrote in the San Jose paper in 2002, where he said, A threat could push Saddam to fight back with the very weapons we are seeking to destroy. He never made any mention of—in fact, the CIA notes were that he was concerned about Iraq trying to get yellowcake uranium. And he never made any mention of it until after France hit the front page as being guilty of fraud under the Oil-for-Food program. And they were supposed to be our friends, and they stabbed us in the back.

Then, according to Ms. Valerie Plame, lots of the French contacts Wilson's buddies had must have been greatly relieved when he was able all of a sudden to come out of the blue and say that Bush lied about the uranium issue. Got France off the front page and put Bush there for the rest of his Administration.

Mr. Fein, I was a little bothered. You said that if the President related what one person said and not the 25, then he certainly would be guilty of the crime. I have had juries come back and say, We believed the one; we didn't believe the 25. That is in the jury's discretion as a finder of fact, and here you have already judged the President.

Mr. FEIN. I think you totally misrepresented what I stated.

Mr. GOHMERT. Listen to me. We will go back and get the transcript. But that is basically what you said. I think you may have overstated your case when you did. And if you would like to clarify, now is the time to do it.

Mr. FEIN. Let me clarify the distinction. In the jury situation that you have got, the jury hears both sides and can believe the one rather than 25. But the jury knows the 25 and the one.

The situation I am referring to is the situation where the Congress just knows about the one and doesn't even know the other 25 exist. That is the difference.

Mr. GOHMERT. Well, the problem is that people in the executive branch have to make findings of facts and have to make decisions because under the Constitution—and it is a great document—I commend it to you—the executive makes these decisions on foreign policy.

Mr. FEIN. No, that is not accurate.

Mr. GOHMERT. We make decisions with the purse strings, and we can affect that. Obviously, we have a disagreement and obviously, depending on who the jury is, one of us can be found guilty of a crime, the way it seems you want to head this thing.

There is not going to be a situation where somebody cannot come forward and say, I don't believe the President, I don't believe the CIA gave us all the information, because they have truckloads of information. And if they leave one thing out, then they are opening themselves up to a crime under this bill.

I think the motives and the motivation of this bill are very good, but I also have concerns when a President says, There is no time for Congress to read this bill. Just give me $800 billion. People are losing their jobs every day. Give me the money. Give me the money. And we have got no time to read the bill. And then, 4 days later, after it is passed, he gets around to a photo op in Denver to sign it.

I feel like we were defrauded into passing a bill under false pretenses there. I mean, the question is: Where does it stop about when you can go after a President? The President was using the political process back when he got the stimulus bill passed. And I am just concerned about us going back to the Carter years of emasculating the intelligence community because, frankly, if I am in the CIA and this bill is law and my gut instinct is there is a real danger, but I know if I am wrong somebody is going to come after me for committing a crime.

You shake your head.

Mr. FEIN. Because that is just wrong. The way in which anybody in the executive branch makes certain there is no accusation, they just disclose all the information available to them to Congress. Then there isn't any conceivable basis that they can say they misled anybody. That is what we want to encourage. They can disclose it in public or in confidential——

Mr. GOHMERT. According to your position, our intelligence would be nothing but a conduit. They would not be able to use their judgment in discerning what was more important and what was less important, because if they were wrong on what was more important or less important, Ah, there you go; you deceived us because you said this was more important.

Mr. FEIN. If you look at the statute, Mr. Congressman, the statute is designed to enforce the congressional exclusive authority to make the decision—not the CIA or the President—the Congress decides whether to initiate warfare and decide that. I don't believe that you could find a single Founding Father, ranging from James Madison to Alexander Hamilton, who ever uttered a syllable suggesting the President could initiate war.

So what we are looking at is, yeah, the reason why you want to make the decision, not the CIA, because it is your responsibility to decide to send men and women off to die. Not the CIA, not the President. It is yours. That is exactly why you don't want them to make the decision. They give you the facts, you decide.

Mr. GOHMERT. Well, do you understand my point that we are going to deprive ourselves of intelligence opinions if we do not—I mean if we make this chilling effect of creating a crime out there, if they are wrong in what they represent?

Mr. FEIN. It is not a crime to make an error in the fact. You disclose what you have got and you let the Members of Congress decide. There is no possible criminality.

Mr. GOHMERT. It would be lovely to live in the bubble that you seem to live in, but politics is a big deal. And in this town, people go after people for criminal violations for purely political reasons. So I can tell you it has a chilling effect all over this town, some of the things that are going on right now.

I would love to think that nobody would ever use politics as a reason to go after somebody when they did nothing wrong, but politics plays a part. And if there is any chance of going after somebody, it does happen.

Obviously, you have been very gracious to me, Mr. Chairman. I appreciate the time.

Mr. SCOTT. Thank you. Let me ask one follow-up question. We have talked about the executive branch may be covered, may be not covered under the present law. This bill would clarify that. But, also, the present law talks about pursuant to the authority of a Committee, which suggests that there is an investigation, hearings going on. This bill does not have that limitation, so that speeches in public made

to—informal comments and speeches made that will convince the public to call your Congressman to vote for the war and create the political climate that makes it possible, would be part of a scheme covering up material facts.

Can you talk about the appropriateness of speeches and informal comments being covered by the criminal statute?

Mr. FEIN. Yes. Let me start with an example so we know that this problem isn't just academic. You may have read the book Angler about Dick Cheney, authored by a reporter of the Washington Post. He recounts—and this has not been disputed by any of the participants—a situation prior to this body's voting on the Iraqi war resolution.

Initially, then-Majority Leader Dick Armey was opposed to the resolution. He said that he didn't see any danger that Saddam Hussein was creating to the United States. And he recounts that Mr. Cheney then approached him in his chambers and told him two things that were not factual. One, that Saddam Hussein had learned how to miniaturize nuclear weapons and, secondly, that al-Qaeda could be the human delivery vehicle for those. And based upon those assertions he changed his vote, at least according to the majority leader, that his vote change may have enabled the House to vote in favor of that.

I see no reason if you can establish that statements in that context were knowingly and purposely made for the purpose of obtaining an authorization for war, why they shouldn't be penalized.

With regard to general statements to the public, again, it is not protected free speech knowingly to make material misstatements of fact, not opinion. And if the purpose is the pernicious one of obtaining authorization for war, I don't see any reason why that should not be penalized.

And I want to come back. There is no risk of any criminal penalty as long as the President makes available to this body all the information that he was examining. And I think it is a gross misperception that, Hey, the President is the one who should be making the decision to go to war or not. That has been the problem for the last 50 years. It is this body that makes the decision. You want to be the people who evaluate those facts based on your own judgment.

Mr. FISHER. I would like to add that the President, when he makes the case to war, is not just to Members of Congress, it is the general public. I don't think you want to set up a situation where the President feels some obligation under the law to tell the truth to Congress and then not tell the truth to the American public, because you fel that from your constituents. That is the whole purpose of the White House machinery, to convince the public to get Congress to do something.

So I think the obligation to tell the truth is equal to Congress and to the public. I think the bill is properly designed that way.

Mr. SCOTT. Thank you.

Mr. Gohmert.

Mr. GOHMERT. Just one follow-up. Mr. Fein, I understand your point. The President does make foreign policy, and the executive branch does. But when you talk about knowingly and purposefully, there are two different things in making the allegation that leads to indictment and then actually convicting someone.

If you have the law there and you are an intelligence officer and you have been gathering resources for months, there is no way you can convey everything. And if you emphasize one thing, you don't have months of research in your presentation. I mean a 5-minute statement here is what you are allowed to make. There is no way you can have all of the information there.

And it is a good point: Make it available. I wish both the past Administration and this Administration were more forthcoming in making information available.

But it is easy to charge people with knowingly. I have heard prosecutors say, Well, we have a difference of opinion on whether you knowingly deceived. We will—that question is for the jury. In the meantime, somebody has been arrested, indicted, because it is not that hard to get somebody indicted. And then you destroy lives, as we have seen repeatedly. Somebody is indicted and later acquitted or charges dropped at the last minute, you destroy lives.

This clearly would have—if I am an intelligence officer, there is no way I would want to be in a position of coming to the Hill and briefing Members of Congress, because there is no way I could give them everything I know. And somebody is going to come after me for whatever I leave out if they don't like the ultimate decision.

And, certainly, if somebody says, What is your gut, I understand the point. This applies to facts and not opinion. But if somebody says, What is your gut instinct, which is one of the most important things an intelligence officer can provide, I would say, You make that call. Because if you make a suggestion, then it appears that that is what you were trying to do—push them in that direction and therefore anything left out on the other side from your opinion could be used to prosecute you.

I just see a terrible chilling effect on our intelligence community. We have already been seeing that play out. And I am just afraid we are going to emasculate again our intelligence community, like the Carter years did, and then we pay the price for years to come.

You had a comment?

Mr. FEIN. Well, I think that there is a practical way to accommodate what you recognize is the infeasibility of coming up and giving you thousands of documents here. In the Reagan administration, if you wanted to come down to a vault, you could go visit, it is open, and the intelligence officer in the position that you have described simply said, I have evaluated all of this information, which is available. If you want to come in with your security clearance at your leisure, you can look at it.

It is my opinion, based on this evaluation, that one, two, three is justified as a conclusion, but the decision is yours. You are deciding. Because, remember, this bill only applies in the context of Congress deciding whether to authorize war. But the ultimate decision is yours. You have got to decide what the facts are, whether they justify going to war. That is his out-of-jail-free card. Because the purpose here is to make sure that Congress knows exactly the level of reliability that they can place in making their decision to vote yea or nay on war issues.

With that kind of statement from the intelligence officer, he is not going to be pursued by anybody.

Mr. GOHMERT. Have you seen the lack of information that has been used to vote to spend more money in the last 7 months?

Mr. FEIN. And it is disgraceful.

Mr. GOHMERT. Well, we do agree on that. But that is my concern, that it may lead to less information being brought forward rather than more. Nobody gets more irate than me if I feel I have been misled into doing something.

There are issues about the last Administration I have concerns about myself. But I just have real concerns about the poor intelligence officers out there being put more in harm's way here than they are out in the field.

But thank you for all of your input.

Thank you, Chairman.

Mr. SCOTT. I want to recognize the presence during the Committee hearing of the gentlelady from Texas, Ms. Jackson Lee, and the gentleman from California, Mr. Lungren. Do you have questions? You are recognized for 5 minutes.

Mr. LUNGREN. I have been watching some of this back at my office and trying to draw a bead on this particular issue. Obviously, a decision to commit troops, whether for the first time or commit additional troops in any circumstance is one of the most serious matters we have. The question is whether this is the proper way to handle it.

One of the reasons I have concerns is what is an opinion and what is a fact. We are now in an imbroglio here in the Congress over a simple document, a chart that was developed by the Republicans on the Joint Economic Committee to show precisely what would happen if we passed the current version of the health legislation that is before the Congress. And, initially, Republicans have been prohibited from sending it out because we were told our schematic is inaccurate, that somehow it is false and misleading.

And then we had the situation where—I am a member of the Franking Commission where we have approved letters—newsletters presented by the other side of the aisle who make a bald statement in there that the stimulus package that was passed has created or saved 3.5 million jobs. I think that is absolutely inaccurate. Yet, that is an opinion they are expressing in an effort to state it as a fact to persuade the audience of their position.

While I disagreed with their representation and they disagreed with our representation of this chart on a serious matter before the American people—health care—I was trying to think if there would be a similar circumstance in which someone discussing the very serious issue of the use of Armed Forces would have the same sort of problem.

And my concern about this bill is: Does it tend to lend itself to that type of characterization, if you disagree with the policy, that is, it is a material misstatement of a fact. The example of the stimulus package, 3.5 million jobs. Now there are those who believe you can determine whether that is a fact or not. But we believe there is a bureaucratic morass in the health bill. And we try and track it. And we are told by the other side that that is a material representation, essentially.

If you have an Administration or representative of the Administration who is making a case and believes, for instance, let's say that there are weapons of mass destruction. This member of the Administration has reviewed all the intelligence, recognizes that you sift through different sources of intelligence, but based on his or her experience believes that to be true and makes that statement, but in conveying that to the Congress, does not point out each and every alternative opinion of which he is aware that would go against that conclusion, would we run—would we potentially run afoul of this law if in fact after the fact it is proven that there were no weapons of mass destruction?

Mr. Fein?

Mr. FEIN. Well, I think there are two issues that are raised by the question. One, you talk about the fact-opinion distinction. We have had Supreme Court decisions certainly since *Gertz v. Welch*, in 1976, 33 years, where the Court definitively said there can't be false opinions, only false statements of fact that can expose you to jeopardy in speech areas that have attempted to draw that line.

Mr. LUNGREN. Depends on who is making the determination what the fact is, though.

Mr. FEIN. I understand, but that is true of any time you have any kind litigation at all. Juries and judges make findings of fact. But I don't think that you could deny that it is an assertion of fact if you say Iraq does or Iran does or not have weapons of mass destruction. But that doesn't necessarily—even if it turns out to be in error, it doesn't mean it is culpable. It is only when the speaker knows, he knowingly states something that is false, that puts someone into jeopardy here.

Mr. LUNGREN. At what point in time does it become false? If he has evidence that he mulls over and in his own mind makes a judgment it is 51-49 that there are weapons of mass destruction, is that misleading the Congress?

Mr. FEIN. You mean if he doesn't disclose that that was close in his judgment?

Mr. LUNGREN. Yes.

Mr. FEIN. I wouldn't think so, but there is no reason why there would be a chilling effect to just say if you are not 100 percent certain, just tell the Members what percentage of confidence you are speaking about; something of that sort.

To go back to the issue of what does he need to do to make certain he is not liable; take the situation where he has got conflicting evidence. He says, Listen, there has been conflicting evidence. My conclusion is that the persuasive case is made that there are or are not weapons of mass destruction. The conflicting evidence is in a vault in the CIA, and you need to make the decision because you are going to decide whether to go to war or not, not me, and you can examine that and you can make up your own mind. That is a way to make certain that you have the maximum disclosure and you are not jeopardizing the intelligence official.

Mr. LUNGREN. If the Chairman would indulge me a little bit further.

Mr. SCOTT. The gentleman is recognized.

Mr. LUNGREN. I must be a slow reader, because I have been reading Eisenhower's book about World War II and his particular activity in Europe, called Crusade in Europe. And in several places he makes it very, very clear that intelligence can never be perfect. In fact, he goes far beyond that. He talks in there about how they were told and he was convinced that when the allied troops came across North Africa, moving from west to east, that their intelligence told them they would be greeted as liberators, those who had been living under the French, when in fact that was absolutely not the case, and they suffered losses as a result.

He mentions in different circumstances during the course of the book about intelligence that was wrong and about how you make your best decision based on the intelligence you have. But I never felt that he suggested that in the making of the decision, that you somehow had to say to your troops as you are sending them off, You know, I got great hopes this is going to work, but there are others in my group here, my subordinates, who have told me there is about a 40, 45 percent chance you are going to fail and you are all going to lose your lives.

That is not exactly the way you run a war.

My question is: Are we trying to sort of split the baby in half here? Putting a criminal sanction on those in the executive branch, as much as I want to have as much information as I have, but putting the burden of criminality on them in these circumstances.

Mr. FEIN. I think your analogy is a little bit misplaced because the circumstances we are talking about—the troops don't have the responsibility for deciding whether to fight. The Congress of the United States does. That is why they need to be told all the information, the percentages that you have described, because you need to decide whether that percentage is enough to send men and women into harm's way.

Once you are already in war, the soldiers don't have any authority under the Constitution or otherwise to second guess the Commander in Chief. You do have authority and an obligation to second guess if you think they are wrong to decide to initiate warfare. That is the difference.

Mr. LUNGREN. Yes, sir.

Mr. FISHER. I think your distinction between facts and opinion is helpful and a bill like this could influence executive officials to be more forthcoming about what they say. If it is an opinion, don't present it as a fact.

As you remember, after Iraq released its weapons of mass destruction report, 2,000 pages, the Administration said it was a 2,000-page lie. One of the things the State Department did was release what they called a fact sheet. And they said Iraq failed to disclose that it was trying to get uranium ore from a country in Africa. That was not a fact. That was something based on a fabricated document. I don't know if the State Department knew it at the time. But that was not a fact.

Mr. LUNGREN. Let me ask you a question. If the State Department didn't know it was fabricated at the time and took it for fact, what is inappropriate about them stating it as a fact?

Mr. FISHER. It is a willful misleading of Congress that we are presenting a fact that is not a fact. It is an assertion, a false assertion.

Mr. LUNGREN. No, no, no. My question was: If they believe it to be true—they did not know it was a fabrication—that is not——

Mr. FISHER. I would hope executive officials would be very careful when they say something is a fact, to know it is a fact, instead of it being a judgment or an opinion.

Mr. LUNGREN. The point I was trying to make is Eisenhower tried to tell us that you don't always know what facts are facts in the area of intelligence. That is the point. You do the best you can. Huge mistakes have been made. Lives have been lost, there is no doubt about that, in decisions that Eisenhower made, based on the information that he had, and every military leader that we have had.

Mr. FISHER. It would also make a difference to me—statements made in time of war, we all know that there are very tough judgments in times of war. I think the Jones bill is clearly on initiating war. And I think you can take a different standard.

Mr. LUNGREN. I thank the Chairman.

Mr. SCOTT. I would like to thank the witnesses for their testimony.

Are there other questions?

Mr. GOHMERT. Mr. Chairman, unanimous consent, just to mention—I didn't know if the witnesses might be interested—but I didn't get here until January of 2005. But early on in one of our

Republican conferences with the President I said, Why do we keep having these actions where we send people into harm's way and we don't have a declaration of war. If you want a declaration of war, why shouldn't we consider doing that?

I am still intrigued we don't do that. We haven't done that for a very long time.

Mr. FEIN. That is wrong. I think that ought to be what Congress does, and you should insist upon it. I don't think the President can just say, Well, if you're not going to give it to me, I will unilaterally initiate war. That is unconstitutional.

Mr. GOHMERT. But the Congress did vote to authorize the sending of troops and providing for them and all. It basically was providing for war without the declaration.

My question back in 2005 was why don't we go ahead and make the declaration if it is really that serious.

Mr. FISHER. From the very start, 1800, 1801, there are two Supreme Court cases that said Congress has an option; it can either authorize or it can declare. And that had been the policy in Europe. Alexander Hamilton mentioned that. So I think, constitutionally, authorization is sufficient to a declaration. I think it is a choice for Congress.

Mr. GOHMERT. No, I agree. My concern grew out of Vietnam when we sent people but we didn't really mean for them to win. If it is serious enough to send them, then we ought to have a declaration and we ought to tell them to do what it takes to win.

Mr. SCOTT. Will the gentleman yield?

Mr. GOHMERT. Sure.

Mr. SCOTT. I just wanted to remind that the bill says knowingly and willfully falsifies, and so forth. If you are making anything close to a good faith statement or even a good faith opinion that is in any kind of good faith, it is not knowingly and willfully falsified.

Mr. GOHMERT. I agree 100 percent, but in this town you wouldn't necessarily be convicted, but you sure could be arrested and harassed from now on.

Mr. FEIN. If I could just make an observation about the alleged politicization of conduct that is at the high national security war area. I do not perceive with the change of Administration from Republican to Democrat on January 20 of this year a politicization of the law enforcement arm of the Justice Department where they are targeting Republicans in the past Administration.

So, obviously, that is a theoretical possibility. But I certainly do not see those officials being subject to grand jury investigations or anything of that sort.

Mr. GOHMERT. I encourage you to read the news.

Mr. FEIN. I do, every day. If you can send me a list of all the former Republican officials who are now under investigation, I would be grateful.

Mr. SCOTT. I think we have gotten a little off subject. But I would like to thank our witnesses for their testimony today. Members may have additional written questions which we will forward to you and ask that you answer as promptly as possible so the answers may be made part of the record. The hearing record will remain open for 1 week for submission of additional materials.

Without objection, the Subcommittee stands adjourned. Thank you.

[Whereupon, at 4:35 p.m., the Subcommittee was adjourned.]

# A P P E N D I X

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## Material Submitted for the Hearing Record

Senate Intelligence Committee Report submitted by the Honorable Walter B. Jones, a Representative in Congress from the State of North Carolina

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| **110th Congress**<br>**2d Session** | **SENATE** | **S. Report**<br>**110–345** |

# REPORT

ON

# WHETHER PUBLIC STATEMENTS REGARDING IRAQ BY U.S. GOVERNMENT OFFICIALS WERE SUBSTANTIATED BY INTELLIGENCE INFORMATION

together with

## ADDITIONAL AND MINORITY VIEWS

June 5, 2008.—Ordered to be printed

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United States Senate

110th Congress

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**Whether Public Statements Regarding Iraq by U.S. Government Officials Were Substantiated by Intelligence Information**

**I. Scope and Methodology**

(U) This report's scope, as agreed to unanimously by the Committee on February 12, 2004, is to assess "whether public statements and reports and testimony regarding Iraq by U.S. Government officials made between the Gulf War period and the commencement of Operation Iraqi Freedom were substantiated by intelligence information."[1]

(U) In order to complete this task, the Committee decided to concentrate its analysis on the statements that were central to the nation's decision to go to war. Specifically, the Committee chose to review five major policy speeches by key Administration officials regarding the threats posed by Iraq, Iraqi weapons of mass destruction programs, Iraqi ties to terrorist groups, and possible consequences of a US invasion of Iraq. These include:

- Vice President Richard Cheney, Speech in Tennessee to the Veterans of Foreign Wars National Convention, August 26, 2002.[2]
- President George W. Bush, Statement before the United Nations General Assembly, September 12, 2002.[3]
- President George W. Bush, Speech in Cincinnati, October 7, 2002.[4]
- President George W. Bush, State of the Union address, January 28, 2003.[5]
- Secretary of State Colin Powell, Speech to the United Nations Security Council, February 5, 2003.[6]

(U) These speeches are the best representations of how the Bush Administration communicated intelligence analysis to the Congress, the American people, and the international community. They are also fairly comprehensive in scope, so evaluations about whether a particular statement in a speech was substantiated can be extrapolated to cover similar statements made at similar times. The Committee believes that these speeches would have been subject to careful review inside the White House and most were also reviewed by the intelligence community. (The drafting processes for the Secretary of State's speech to the Security Council, and portions of the

[1] Senate Select Committee on Intelligence Press Release, "Chairman Roberts and Vice Chairman Rockefeller Issue Statement on Intelligence Committee's Review of Pre-War Intelligence in Iraq," February 12, 2004.
[2] Transcript available at http://www.whitehouse.gov.news/releases/2002/08/20020826.html, last visited March 21, 2008.
[3] Transcript available at http://www.whitehouse.gov.news/releases/2002/09/20020912-1.html, last visited March 21, 2008.
[4] Transcript available at http://www.whitehouse.gov.news/releases/2002/10/20021007-8.html, last visited March 21, 2008.
[5] Transcript available at http://www.whitehouse.gov.news/releases/2003/01/20030128-19.html, last visited March 21, 2008.
[6] Transcript available at http://www.state.gov/secretary/former/powell/remarks/2003/17300.htm, last visited March 21, 2008.

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2003 State of the Union and the President's speech in Cincinnati, are all discussed in the Committee's first report on pre-war Iraq intelligence, Senate Report 108-301. The Vice President's August 2002 speech was not reviewed by the intelligence community. Intelligence officials have told the Committee that they could not find any evidence that the President's September 2002 address to the UN General Assembly was reviewed by the intelligence community.)

(U) The Committee selected particular statements from these speeches that pertained to eight categories: nuclear weapons, biological weapons, chemical weapons, weapons of mass destruction (generally), methods of delivery, links to terrorism, regime intent, and assessments about the post-war situation in Iraq. The report is organized along these eight categories, with each section listing the relevant statements from the speeches.

(U) This report does not include statements made prior to summer 2002 or statements made by officials of the United States Government beyond the top levels of the Executive Branch. At the end of each section, following analysis of the five speeches, the Committee has listed additional statements by senior officials from the same time period. Those statements that contain assertions not included in the five major policy speeches have been examined further, to determine whether they were substantiated by available intelligence.

(U) To conduct this review, the Committee assembled hundreds of intelligence reports produced prior to March 19, 2003 in an effort to understand the state of intelligence analysis at the time of various speeches and statements. The Committee is fully aware that officials may have had multiple credible sources of information upon which to base statements, but has not attempted to document or analyze source materials other than the intelligence, since that is beyond the scope of this report.

(U) Furthermore, the Committee reviewed only finished analytic intelligence documents, with few exceptions. This did not include intelligence reports "from the field" or less formal communications between intelligence agencies and other parts of the Executive Branch.

(U) The Committee has attempted to note where disagreements existed within the Intelligence Community and where different reporting could substantiate different interpretations. In order to complete this task, however, this report focuses first on major coordinated inter-agency intelligence reports such as National Intelligence Estimates, Intelligence Community Assessments and Briefs, and other consensus products. These products are not only the most authoritative, representing the full Intelligence Community position on the issues they cover, but also tend to be widely circulated within the government. The Committee also examined assessments, reports and statements to Congress from individual intelligence agencies to address those issues for which coordinated reports were not available or where there was disagreement among agencies.

(U) In addition to examining the question of whether public statements were substantiated by the underlying intelligence, the Committee's review also addressed the extent to which statements were incomplete and where relevant Intelligence Community assessments were not made part of the public discourse. A public statement that selectively uses only that intelligence

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that supports a particular policy position while ignoring or disregarding intelligence that either weakens or contradicts the position may be accurate on its face but present a slanted picture nonetheless.

(U) Overlaying this issue of the selective use of intelligence is the more fundamental issue of the selective declassification of intelligence. Intelligence information contained in many of the speeches analyzed in this report had to be declassified before being released publicly. The Executive Branch has the prerogative to classify information to protect national security, and unlike Congress the Executive Branch can declassify information relatively easily. Until the Congress sought and obtained the release of an unclassified version of the key judgments of the October 2002 National Intelligence Estimate on Iraq's presumed weapons of mass destruction programs, the analytical judgments of the Intelligence Community on these matters were classified. The collected intelligence underlying these judgments remained classified until after the invasion of Iraq. Few, if any, of the Intelligence Community's assessments on Iraq's links to terrorism, the intent of the Iraqi regime, projected post-war conditions, or other relevant matters contained in the statements of senior officials were publicly released before the war. This ability of the Executive Branch to unilaterally declassify and divulge intelligence information at a time, place, and in a manner of its choosing must also be taken into account when evaluating policymakers' use of intelligence information.

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**II. Nuclear Weapons**

- "The Iraqi regime has in fact been very busy enhancing its capabilities in the field of chemical and biological agents. And they continue to pursue the nuclear program they began so many years ago." - *Vice President Richard Cheney, Nashville, Tennessee, August 26, 2002*

- "But we now know that Saddam has resumed his efforts to acquire nuclear weapons." - *Vice President Richard Cheney, Nashville, Tennessee, August 26, 2002*

- "Many of us are convinced that Saddam will acquire nuclear weapons fairly soon." - *Vice President Richard Cheney, Nashville, Tennessee, August 26, 2002*

- "What he wants is time and more time to husband his resources, to invest in his ongoing chemical and biological weapons programs, and to gain possession of nuclear arms." - *Vice President Richard Cheney, Nashville, Tennessee, August 26, 2002*

- "Today, Iraq continues to withhold important information about its nuclear program – weapons design, procurement logs, experiment data, an accounting of nuclear materials and documentation of foreign assistance. Iraq employs capable nuclear scientists and technicians. It retains physical infrastructure needed to build a nuclear weapon. Iraq has made several attempts to buy high-strength aluminum tubes used to enrich uranium for a nuclear weapon. Should Iraq acquire fissile material, it would be able to build a nuclear weapon within a year. And Iraq's state-controlled media has reported numerous meetings between Saddam Hussein and his nuclear scientists, leaving little doubt about his continued appetite for these weapons." - *President George W. Bush, Address to the United Nations General Assembly, September 12, 2002*

- "But Saddam Hussein has defied all these efforts and continues to develop weapons of mass destruction. The first time we may be completely certain he has a – nuclear weapons is when, God forbids, he uses one." - *President George W. Bush, Address to the United Nations General Assembly, September 12, 2002*

- "The Iraqi regime has violated all of these obligations. It possesses and produces chemical and biological weapons. It is seeking nuclear weapons." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "The evidence indicates that Iraq is reconstituting its nuclear weapons program. Saddam Hussein has held numerous meetings with Iraqi nuclear scientists…Satellite photographs reveal that Iraq is rebuilding facilities at sites that have been part of its nuclear program in the past. Iraq has attempted to purchase high-strength aluminum tubes and other equipment needed for gas centrifuges, which are used to enrich uranium for nuclear weapons." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

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- "If the Iraqi regime is able to produce, buy or steal an amount of highly enriched uranium a little larger than a single softball, it could have a nuclear weapon in less than a year." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "Facing clear evidence of peril we cannot wait for the final proof – the smoking gun – that could come in the form of a mushroom cloud." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "After eleven years during which we have tried containment, sanctions, inspection, even selected military action, the end result is that Saddam Hussein still has chemical and biological weapons and is increasing his capabilities to make more. And he is moving ever closer to developing a nuclear weapon." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "We could wait and hope that Saddam does not give weapons to terrorists, or develop a nuclear weapon to blackmail the world. But I'm convinced that is a hope against all evidence." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "To spare himself, he agreed to systematically disarm of all weapons of mass destruction. For the next twelve years, he systematically violated that agreement. He pursued chemical, biological and nuclear weapons, even while inspectors were in his country. Nothing to date has restrained him from his pursuit of these weapons – not economic sanctions, not isolation from the civilized world, not even cruise missile strikes on his military facilities." - *President George W. Bush, State of the Union Address, January 29, 2003*

- "The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa. Our intelligence sources tell us that he has attempted to purchase high-strength aluminum tubes suitable for nuclear weapons production." - *President George W. Bush, State of the Union Address, January 29, 2003*

- "We have no indication that Saddam Hussein has ever abandoned his nuclear weapons program. On the contrary, we have more than a decade of proof that he remains determined to acquire nuclear weapons." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "Saddam Hussein is determined to get his hands on a nuclear bomb. He is so determined that he has made repeated covert attempts to acquire high-specification aluminum tubes from eleven different countries, even after inspections resumed." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "By now, just about everyone has heard of these tubes and we all know that there are differences of opinion. There is controversy about what these tubes are for. Most U.S. experts think they are intended to serve as rotors in centrifuges used to enrich uranium. Other experts, and the Iraqis themselves, argue that they are really to produce the rocket

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bodies for a conventional weapon, a multiple rocket launcher." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "Intercepted communications from mid-2000 through last summer showed that Iraq front companies sought to buy machines that can be used to balance gas centrifuge rotors. One of these companies also had been involved in a failed effort in 2001 to smuggle aluminum tubes into Iraq." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "We also have intelligence from multiple sources that Iraq is attempting to acquire magnets and high-speed balancing machines. Both items can be used in a gas centrifuge program to enrich uranium." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

(U) In major policy speeches the President, the Vice President and the Secretary of State indicated that the Iraqi government had an active nuclear weapons program. The President and the Secretary of State both indicated that this nuclear weapons program had continued even while international weapons inspectors were in Iraq.

*Vice President's Speech in Tennessee (August 26, 2002)*

(U) In the Vice President's August 2002 speech on Iraq, he stated that the Iraqi regime had resumed pursuit of a nuclear weapons development program, and said "many of us are convinced that Saddam Hussein will acquire nuclear weapons fairly soon". He also said that "Saddam has resumed his efforts to acquire nuclear weapons", and that the Iraqi regime "continue[s] to pursue the nuclear program they began so many years ago."[7]

(U) In the late 1990s and early 2000s, the intelligence community produced a number of coordinated assessments regarding possible Iraqi nuclear programs. These assessments consistently concluded that the International Atomic Energy Agency (IAEA) and the United Nations Special Commission (UNSCOM) had destroyed or neutralized Iraq's pre-Gulf War nuclear infrastructure, and that Iraq did not appear to have reconstituted its nuclear weapons program.[8]

(U) These assessments were also consistent in assessing that Iraq had maintained some of the intellectual capital and physical infrastructure necessary for a nuclear weapons program, and that Iraq continued to procure "dual-use" technologies, with both nuclear and non-nuclear potential

[7] White House Transcript, *Vice President Speaks at VFW 103rd National Convention*, August 26, 2002.
[8] Joint Atomic Energy Intelligence Committee Report, *Reconstitution of Iraq's Nuclear Weapons Program: An Update*, October 1997; National Intelligence Council Memorandum, *Current WMD Capabilities*, October 1998; Joint Atomic Energy Intelligence Committee Report, *Reconstitution of Iraq's Nuclear Weapons Program: Post Desert Fox*, June 1999; Intelligence Community Assessment, *Iraq: Steadily Pursuing WMD Capabilities*, December 2000; and National Intelligence Estimate, *Foreign Missile Developments and the Ballistic Missile Threat Through 2015*, December 2001. (These reports are summarized in *Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, Senate Select Committee on Intelligence, Senate Report 108-301, July 9, 2004).

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uses. They agreed that if Iraq decided to restart a nuclear weapons program, with proper foreign assistance it could produce enough fissile material for a nuclear weapon within five to seven years, and that if Iraq in some way acquired adequate fissile material from a foreign source, it could produce a nuclear weapon within one year. The December 2001 National Intelligence Estimate (NIE) on foreign missile developments also noted that "Recent Iraqi procurements...suggest possible preparation for a renewed uranium enrichment program," a slight shift in the intelligence community's judgments, but still consistent with the judgment that Iraq did not appear to have reconstituted its nuclear weapons program.[9]

(U) The intelligence community's collective judgment that Iraq did not appear to have reconstituted its nuclear weapons program did not change until the publication of the October 2002 NIE on Iraqi WMD programs, which was the next NIE to address the topic. However, some individual agencies shifted their perspectives before this point. In April 2001, the CIA noted that Iraq's attempts to purchase high-strength aluminum tubes and other dual-use equipment suggested that a reconstitution effort might be underway. This judgment was included in several other CIA assessments.[10] In August 2002 the CIA published a paper on Iraqi WMD capabilities (*Iraq: Expanding WMD Capabilities Pose Growing Threat*), which concluded that these procurement activities indicated that the Iraqi government had restarted its nuclear weapons program.[11]

(U) The Defense Intelligence Agency produced several similar assessments in 2002, noting in a May 2002 report that "Although there is no firm evidence of a current nuclear weapon design effort, we judge that continued procurement of dual-use nuclear-related items, key personnel assigned to nuclear weapon-capable sites, construction at nuclear facilities, and Saddam's interactions with the Iraqi Atomic Energy Commission all indicate that Saddam has not abandoned the nuclear weapon program."[12]

(U) The Department of Energy (DOE) disagreed with the CIA's conclusions regarding the aluminum tubes, and assessed that it was more likely that the tubes were intended for a different use, such as a conventional rocket program.[13] Based on other evidence, including Saddam's

[9] Ibid.

[10] Senior Executive Intelligence Brief, *Iraq - Purchases Could Revive Nuclear Program* (SC_No: PASS SEIB 01-083CHX), April 10, 2001; CIA, *Iraq: New Effort to Get Centrifuge Tubes,* July 2001; Senior Executive Intelligence Brief, *Iraq: Nuclear-Related Procurement Efforts*, October 18, 2001; Senior Executive Intelligence Brief, *Iraq: Seeking to Rebuild Enrichment Capability*, November 2001; CIA, *Iraq: Centrifuge-based Uranium Enrichment Program Before and After Gulf War*, November 2001; CIA Senior Executive Memorandum, December 15, 2001; CIA, Iraq*: Status of the Nuclear Program*, January 11, 2002; CIA, *Iraq: Status of Baghdad's Uranium Enrichment Program*, March 2002.

[11] CIA, *Iraq: Expanding WMD Capabilities Pose Growing Threat,* August 2002.

[12] DIA EH, *Baghdad apparently has increased its activity at former and suspect nuclear sites*, January 15, 2002; DIA Defense Intelligence Assessment, *Iraq's Weapons of Mass Destruction and Theater Ballistic Missile Programs: Post-9-11 September*, January 2002; DIA Information Paper, *Proliferation of Nuclear Weapons*, April 15, 2002; DIA Information Paper, *Comparison of NBC and missiles programs in Iraq, Iran and Syria*, September 10, 2002; DIA, *Iraq – Key WMD Facilities An Operational Support Study*, September 2002; DIA,*Iraq: Nuclear Program Handbook (DI-1610-81-01), Defense Intelligence Assessment*, May 2002; DIA, Iraq's Reemerging Nuclear Weapon Program, September 2002.

[13] Department of Energy Daily Intelligence Highlight, *Iraq: High Strength Aluminum Tube Procurement,* April 11, 2001; Department of Energy Technical Intelligence Note, Iraq's Gas Centrifuge Program: Is Reconstitution Underway?, August 17, 2001.

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meetings with Iraqi nuclear scientists, and possible attempts to procure uranium from Niger, the DOE assessed in July 2002 that Saddam Hussein might be attempting to reconstitute a nuclear weapons program, but suggested that the evidence was not conclusive.[14]

(U) The Department of State's Bureau of Intelligence and Research (State/INR) disagreed with the CIA that Iraq had restarted a nuclear weapons program, and concurred with the DOE that the aluminum tubes were probably intended for other purposes. This view was included in congressional testimony in September 2002, but State/INR did not publish any reports on the aluminum tubes outside of the State Department until after publication of the October 2002 NIE.[15]

[redacted] Several of these intelligence agencies also made reference to assessments by the National Ground Intelligence Center (NGIC) regarding the aluminum tubes. Testimony by the Director of Central Intelligence to Congress stated that NGIC judged that "Iraq's dimensional requirements for the tubes are far stricter than necessary for rocket casings." A later memo from State/INR said that "the IAEA and [redacted] pertinent nuclear-technical experts have concluded independently that the aluminum tubes are not intended for Iraq's nuclear program and are consistent with rocket casings...DOE and DoD's National Ground Intelligence Center (NGIC) concur on this assessment, though NGIC does not share most of the other DOE views on tactical rockets."[16]

(U) According to a DIA report, the intelligence community continued to assess that it would take five to seven years from the commencement of a revived nuclear program for the Iraqi government to indigenously produce enough fissile material for a nuclear weapon. This same report repeated the assessment that a nuclear weapon could be constructed much faster if adequate fissile material was acquired from a foreign source, though an earlier CIA assessment noted that "we have not detected a dedicated Iraqi effort to obtain fissile material abroad."[17]

***President's Speech to the UN General Assembly (September 12, 2002)***

(U) In the President's address to the United Nations General Assembly, he stated that Iraq continued to develop weapons of mass destruction, and indicated that Iraq had an ongoing nuclear weapons program. Specifically, he referred to Iraqi efforts to purchase aluminum tubes, Iraqi efforts to conceal information about its pre-Gulf War nuclear program, and meetings between Saddam Hussein and Iraqi nuclear scientists. He noted that Iraq possessed some of the intellectual capital and physical infrastructure that would be necessary for a nuclear weapons

[14] Department of Energy Daily Intelligence Highlight, *Nuclear Reconstitution Efforts Underway?,* July 22, 2002.
[15] Senate Select Committee on Intelligence transcript of Hearing on Iraq, September 17, 2002; *Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, Senate Select Committee on Intelligence, Senate Report 108-301, July 9, 2004.
[16] Senate Select Committee on Intelligence transcript of Hearing on Iraq, September 17, 2002; State/INR Memorandum, *Iraq: Quest for Aluminum Tubes*, October 9, 2002.
[17] CIA, *Senior Executive Memorandum*, December 15, 2001; DIA, *Iraq: Nuclear Program Handbook (DI-1610-81-01), Defense Intelligence Assessment*, May 2002 (citing the views of the intelligence community).

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program, and said that if Iraq could "acquire fissile material, it would be able to build a nuclear weapon within a year."[18]

(U) As noted above, the intelligence community had assessed for years that while Iraq's nuclear infrastructure had been destroyed or neutralized by the IAEA and the UN, Iraq still possessed some of the physical infrastructure and scientific personnel that would be necessary for reconstituting a nuclear weapons program. Though the intelligence community as a whole had not yet concluded that a nuclear weapons program was underway, some (though not all) intelligence agencies believed that Iraq's attempts to acquire high-strength aluminum tubes, along with supporting evidence such as Saddam's meetings with Iraqi nuclear science personnel, indicated that the nuclear program was in fact being reconstituted.

(U) Intelligence community analysts generally believed that the Iraqi government's failure to provide certain evidence and documents regarding its pre-1991 nuclear program indicated that the Iraqi government was attempting to conceal this information. However, this conclusion was not cited by the intelligence community as compelling evidence for a reconstituted, post-Gulf War nuclear weapons program.[19]

(U) Numerous intelligence assessments made reference to open source information showing that Saddam met with personnel from the Iraqi Atomic Energy Commission (IAEC).[20]

(U) At the time of the President's address to the General Assembly, the intelligence community had not changed its judgment that it would take Iraq at least several years to produce enough fissile material for a nuclear weapon ('five to seven years' was the commonly cited timeframe, though a September 2002 DIA report judged that it could be done in four)[21], and that Iraq could build a nuclear weapon within one year if it in some way acquired an adequate amount of fissile material from a foreign source.

***President's Speech in Cincinnati (October 7, 2002)***

(U) In the President's speech on Iraq in Cincinnati, he stated that the Iraqi regime was "seeking nuclear weapons", and that Saddam Hussein was "moving ever closer to developing a nuclear weapon". He reiterated earlier statements about Saddam holding "numerous meetings with Iraqi nuclear scientists", and attempting to "purchase high-strength aluminum tubes and other equipment needed for gas centrifuges". He also said that Iraq was "rebuilding facilities at sites that have been part of its nuclear program in the past", and that "the evidence indicates that Iraq is reconstituting its nuclear weapons program."[22]

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[18] White House Transcript, *President's Remarks at the United Nations General Assembly,* September 12, 2002.
[19] CIA, *Iraq: Continuing To Stonewall IAEA*, July 10, 1998; DIA, *Iraq: Nuclear Program Handbook (DI-1610-81-01), Defense Intelligence Assessment*, May 2002; and CIA, *Iraq: Status of the Nuclear Program,* January 11, 2002.
[20] DOE, *Iraq: Nuclear Reconstitution Efforts Underway?*, July 22, 2002; CIA, *Iraq: Questions on Nuclear Timeline,* September 11, 2002; *Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, Senate Select Committee on Intelligence, Senate Report 108-301, July 9, 2004.
[21] DIA, *Iraq – Key WMD Facilities An Operational Support Study*, September 2002.
[22] White House Transcript, *President Bush Outlines Iraqi Threat*, October 7, 2002.

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(U) The President also repeated his statement that if the Iraqi regime came to possess highly enriched uranium, "it could have a nuclear weapon in less than a year." Additionally, he suggested that there was clear evidence that Iraq was developing a nuclear weapon, declaring that "facing clear evidence of peril we cannot wait for the final proof – the smoking gun – that could come in the form of a mushroom cloud." He concluded that "we could wait and hope that Saddam does not give weapons to terrorists, or develop a nuclear weapon to blackmail the world. But I'm convinced that is a hope against all evidence."[23]

(U) In the October 2002 National Intelligence Estimate (NIE) on Iraqi weapons of mass destruction, the intelligence community expressed the majority view (with all agencies except State/INR concurring) that Iraq was reconstituting its nuclear weapons program. This conclusion was based on three primary bodies of evidence: Iraqi procurement attempts (primarily of aluminum tubes, but also including other dual-use technologies, such as magnets, high-speed balancing machines, and machine tools), apparent regime efforts to reestablish Iraq's cadre of weapons personnel, and apparent activity at several suspected nuclear weapons sites.[24]

(U) State/INR dissented from the majority view, and stated in the NIE that the available evidence did "not add up to a compelling case for reconstitution" of an Iraqi nuclear weapons program. The DOE dissented from the majority view that the high-strength aluminum tubes were intended for use in a nuclear program, but concurred with the majority judgment that reconstitution was underway.[25]

(U) In addition to discussing Iraqi attempts to procure aluminum tubes and other dual-use technologies, the NIE described meetings between Saddam Hussein and IAEC personnel. The NIE, like several earlier DIA reports, also discussed construction at facilities that might have nuclear applications Construction at sites known to have been part of Iraq's pre-Gulf War nuclear weapons program was mentioned in earlier assessments (though not specifically in the NIE).[26]

(U) State/INR's alternative views, which were incorporated in the NIE, said that State/INR accepted "the view of technical experts at the Department of Energy" who concluded that the aluminum tubes were "poorly suited" for a nuclear weapons program. The alternative views also cast doubt on the judgment that other dual-use procurement efforts were related to a nuclear program, and went on to say that "the information we have on Iraqi nuclear personnel does not appear consistent with a coherent effort to reconstitute a nuclear weapons program."[27]

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[23] Ibid.
[24] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002. Committee staff were also permitted to view a one-page summary of the NIE, which was prepared for the President. This one-page summary stated that "INR judges that the evidence indicates, at most, a limited Iraqi nuclear reconstitution effort."
[25] Ibid.
[26] DIA, *Iraq: Nuclear Program* Handbook, May 2002; DIA, Iraq's Reemerging Nuclear Weapon Program, September 2002; DIA, *Iraq – Key WMD Facilities An Operational Support Study*, September 2002; National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002; Intelligence Community Assessment, *Iraq: Steadily Pursuing WMD Capabilities*, December 2000.
[27] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002.

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(U) The majority view of the NIE assessed that Iraq would be able to produce a nuclear weapon in five to seven years, and posited a "much less likely scenario" in which production time could be shortened to three to five years. The majority view also assessed that if Iraq acquired fissile material from an outside source that production time could be "within several months to a year", but noted that Iraq did not appear to have a "systematic effort to acquire foreign fissile materials from Russia [or] other sources." State/INR said that it could not predict when Iraq might acquire a nuclear weapon, since it lacked persuasive evidence of a reconstituted nuclear program.[28]

***President's State of the Union Address (January 29, 2003)***

(U) In the President's 2003 State of the Union Address, he stated that Iraq had pursued nuclear weapons even while weapons inspectors were in Iraq. He also said that the Iraqi regime had attempted to purchase aluminum tubes that could be used in a nuclear program, and that "the British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa."[29]

(U) While the intelligence community assessed that Iraq had initially attempted to continue its nuclear weapons program following the imposition of post-Gulf War sanctions, most agencies believed that the IAEA and UNSCOM had succeeded in destroying or neutralizing Iraq's nuclear infrastructure, and that the regime did not resume its pursuit of nuclear weapons until December 1998, when UNSCOM inspectors left the country. As noted above, State/INR did not believe that reconstitution had begun at all.[30]

(U) The October 2002 NIE contained an annex on the high-strength aluminum tubes. Although all the intelligence agencies agreed that the aluminum tubes were a dual-use technology, DOE and State/INR assessed that it was unlikely that the tubes were being used for nuclear weapons-related purposes. Other agencies concurred with the majority view, which cited the aluminum tubes as the primary evidence of an ongoing nuclear weapons program. Neither the concurring nor dissenting agencies changed their view between the publication of the NIE and the invasion of Iraq.[31]

(U) An unclassified British white paper from September 2002 had assessed that Iraq had sought large quantities of natural (non-enriched) uranium from Africa. This was echoed by a statement in the NIE, which said "Iraq also began vigorously trying to procure uranium ore and yellowcake; acquiring either would shorten the time Baghdad needs to produce nuclear weapons." This was not cited by the NIE as key evidence for an ongoing nuclear program.

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[28] Ibid.
[29] White House Transcript, *President Delivers "State of the Union"*, January 28, 2003.
[30] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002; Prepared Statement of Director of Central Intelligence George Tenet Before the Senate Armed Services Committee and the Senate Select Committee on Intelligence, September 17, 2002; and *Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, Senate Select Committee on Intelligence, Senate Report 108-301, July 9, 2004.
[31] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002, and *Report on Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare With Prewar Assessments*, Senate Select Committee on Intelligence, Senate Report 109-331, September 8, 2006.

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State/INR's alternative views said that "the claims of Iraqi pursuit of natural uranium in Africa are, in INR's assessment, highly dubious."[32]

(U) The CIA's comments and assessments about the Iraq-Niger uranium reporting were inconsistent, and at times contradictory, following the publication of the NIE. Neither State/INR, nor the DIA, nor the DOE shifted their assessments regarding this issue between the publication of the NIE and the invasion of Iraq.[33]

(U) Intelligence assessments regarding the uranium reporting and the coordination process for the State of the Union address are discussed in more detail in previous Committee reports. (Senate Reports 108-301 and 109-331).

***Secretary of State's Address to the UN Security Council (February 5, 2003)***

(U) In the Secretary of State's February 2003 address to the United Nations Security Council, he stated that Saddam Hussein was determined to acquire nuclear weapons, and argued that Iraq had not abandoned its pre-Gulf War weapons program. He specifically referred to Iraqi attempts to procure dual-use technologies, including aluminum tubes, magnets, and high-speed balancing machines.

(U) The Secretary of State said that "most U.S. experts" believed that the aluminum tubes were intended to be part of a nuclear weapons program, and acknowledged that "other experts", as well as the Iraqi government, had argued that the tubes were intended for use in conventional rocket programs.

(U) United States intelligence agencies continued to differ over the intended purpose of the aluminum tubes - State/INR and the DOE continued to disagree with the majority view and assessed that procurement efforts were "not clearly linked to a nuclear end use."

(U) The intelligence community also assessed that the Iraqi government was seeking to purchase certain other dual-use technologies, and State/INR continued to disagree with the majority view that these technologies were part of a nuclear weapons program.

(U) The Secretary of State did not mention apparent activity at former nuclear facilities or reports about Iraq acquiring uranium from Africa in his address to the Security Council.

**Additional Statements**

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[32] Joint Intelligence Committee of the United Kingdom, *Iraq's Weapons of Mass Destruction*, September 24, 2002; National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002; *Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, Senate Select Committee on Intelligence, Senate Report 108-301, July 9, 2004.

[33] *Report on Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare With Prewar Assessments*, Senate Select Committee on Intelligence, Senate Report 109-331, September 8, 2006.

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- "[T]he issue's not inspectors. The issue is that [Saddam Hussein] has chemical weapons and he's used them. The issue is that he's developing and has biological weapons. The issue is that he's pursuing nuclear weapons...[H]e is actively pursuing nuclear weapons at this time..." - *Vice President Dick Cheney, Late Edition, March 24, 2002*

- (Question: Can we rule out right now Saddam's having a nuclear weapon?) "I would not want to give you an intelligence judgment on that. Our best information right now is that he is working hard on [developing nuclear weapons], but we cannot confirm that he has one. But we are absolutely certain that he continues to try to develop one or obtain one." - *Secretary of State Colin Powell, Fox News Sunday, September 8, 2002*

- "With respect to nuclear weapons, we are quite confident that [Saddam Hussein] continues to try to pursue the technology that would allow him to develop a nuclear weapon. Whether he could do it in one, five, six or seven, eight years is something that people can debate about, but what nobody can debate about is the fact that he still has the incentive, he still intends to develop those kinds of weapons." – *Secretary of State Colin Powell, Fox News Sunday, September 8, 2002*

- "[Saddam] now is trying, through his illicit procurement network, to acquire the equipment he needs to be able to enrich uranium to make the bombs." – *Vice President Dick Cheney, Meet the Press, September 8, 2002*

- "[Saddam Hussein's] regime has an active program to acquire and develop nuclear weapons." – *Secretary of Defense Donald Rumsfeld, Testimony before the House Armed Service Committee, September 18, 2002*

**(U)** The above statements are all consistent with the five policy speeches analyzed. The statements below differ in significant ways.

- "We do know that he is actively pursuing a nuclear weapon. We do know that there have been shipments going into Iran, for instance -- into Iraq, for instance, of aluminum tubes that really are only suited to -- high-quality aluminum tubes that are only really suited for nuclear weapons programs, centrifuge programs. We know that he has the infrastructure, nuclear scientists to make a nuclear weapon." – *National Security Advisor Condoleezza Rice, Late Edition, September 8, 2002*

**(U)** On September 8, 2002, the National Security Advisor said that the aluminum tubes sought by Iraq "are only really suited for nuclear weapons programs". Although both the CIA and DIA had assessed that the aluminum tubes were intended for a nuclear weapons program (with the CIA noting that the tubes were "best suited" for centrifuges, and that other explanations were "inconsistent with the total body of intelligence"), the DOE had assessed that this was unlikely,

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and had published intelligence reports explaining why it was possible (and, in the DOE's view, more likely) that the tubes were intended to be used to build conventional rockets.[34]

- "His regime has an active program to acquire and develop nuclear weapons. They have the knowledge of how to produce nuclear weapons, and designs for at least two different nuclear devices. They have a team of scientists, technicians and engineers in place, as well as the infrastructure needed to build a weapon. Very likely all they need to complete a weapon is fissile material-and they are, at this moment, seeking that material-both from foreign sources and the capability to produce it indigenously." – *Secretary of Defense Donald Rumsfeld, Testimony before the Senate Armed Services Committee, September 19, 2002*

(U) On September 19, 2002, the Secretary of Defense stated that Iraq possessed designs for at least two nuclear devices. He also stated that the Iraqi government was seeking fissile material from foreign sources.

[redacted] Intelligence obtained after the Gulf War indicated that Iraq had developed two designs for nuclear weapons. Both apparently failed to meet key Iraqi objectives – the smaller of the two had an estimated yield of [redacted],[35] and the larger of the two, which had an estimated yield of [redacted], could not be delivered by missile.[36] Although the intelligence community did not assess that Iraq was engaged in a systematic effort to acquire fissile material from abroad, a September 2002 DIA report noted that "a sensitive source indicates that since inspectors left in 1998, Iraq has been trying to acquire highly enriched uranium."[37]

- "But we now have irrefutable evidence that he has once again set up and reconstituted his program, to take uranium, to enrich it to sufficiently high grade, so that it will function as the base material as a nuclear weapon." - *Vice President Richard Cheney, Speech in Casper, Wyoming, September 20, 2002 (quoted by the Associated Press)*

(U) In September 2002 the Vice President stated that there was "irrefutable evidence" that Iraq had reconstituted a nuclear weapons program. As noted, several intelligence agencies assessed that reconstitution was underway, but the Department of Energy assessed that the evidence was less conclusive (State/INR agreed with the Department of Energy, but had not published any reports on the topic outside of the State Department at that point).[38]

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[34] Department of Energy Daily Intelligence Highlight, *Iraq: High Strength Aluminum Tube Procurement,* April 11, 2001; Department of Energy, *Iraq's Gas Centrifuge Program: Is Reconstitution Underway?*, August 17, 2001, p. 12; DIA, *Iraq: Nuclear Program Handbook (DI-1610-81-01), Defense Intelligence Assessment*, May 2002; Department of Energy Daily Intelligence Highlight, *Nuclear Reconstitution Underway?,* July 22, 2002; CIA, *Iraq: Expanding WMD Capabilities Pose Growing Threat,* August 2002.

[35] A kiloton is a measure of explosive force equivalent to 1000 tons of TNT. The atomic bomb dropped on Hiroshima is generally estimated to have exploded with a force of 12-15 kilotons.

[36] The post-Gulf War reporting is summarized in the October 2002 NIE, which was published a few weeks after the Secretary's testimony.

[37] DIA, *Iraq's Reemerging Nuclear Weapons Program*, September 2002.

[38] Department of Energy Daily Intelligence Highlight, *Iraq: High Strength Aluminum Tube Procurement,* April 11, 2001; Department of Energy Daily Intelligence Highlight, *Nuclear Reconstitution Underway?,* July 22, 2002; Senate Select Committee on Intelligence transcript of Hearing on Iraq, September 17, 2002.

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- "It is going to be cheaper and less costly to do it now than it will be to wait a year or two years or three years until he's developed even more deadly weapons, perhaps nuclear weapons." – *Vice President Richard Cheney, Meet the Press, March 16, 2003*

(U) In March 2003 the Vice President suggested that it was possible that Iraq could develop nuclear weapons within one to three years. The majority view of the NIE concluded that unless it acquired fissile material from abroad, Iraq probably would not be able to make a nuclear weapon for five to seven years. The NIE described a "much less likely" scenario in which Iraq could produce enough fissile material for a weapon in three to five years, and also assessed that if the Iraqi regime acquired sufficient fissile material from abroad, it could build a weapon in "several months to a year." While most intelligence agencies assessed that Iraq had made a few efforts to acquire fissile material from abroad, the NIE noted that Iraq had apparently not instituted a systematic effort to acquire foreign fissile materials.[39]

- "We know that based on intelligence that he has been very, very good at hiding these kinds of efforts. He's had years to get good at it and we know he has been absolutely devoted to trying to acquire nuclear weapons. And we believe he has, in fact, reconstituted nuclear weapons. I think Mr. El-Baradei frankly is wrong. And I think if you look at the track record of the International Atomic Energy Agency and this kind of issue, especially where Iraq's concerned, they have consistently underestimated or missed what it was Saddam Hussein was doing. I don't have any reason to believe they're any more valid this time than they've been in the past." - *Vice President Dick Cheney, Meet the Press, March 16, 2003*

(U) In March 2003 the Vice President also said that Iraq had reconstituted nuclear weapons. Elsewhere in the same interview he indicated that Iraq did not yet possess nuclear weapons, and that "it's only a matter of time until he [Saddam Hussein] acquires nuclear weapons." No intelligence agency ever assessed that Iraq had reconstituted nuclear weapons. In an interview on September 13, 2003, the Vice President said that he had misspoken, and had meant to say "nuclear weapons capability", rather than "nuclear weapons".

**Conclusions**

**(U) Conclusion 1: Statements by the President, Vice President, Secretary of State and the National Security Advisor regarding a possible Iraqi nuclear weapons program were generally substantiated by intelligence community estimates, but did not convey the substantial disagreements that existed in the intelligence community.**
Prior to the October 2002 National Intelligence Estimate, some intelligence agencies assessed that the Iraqi government was reconstituting a nuclear weapons program, while others disagreed or expressed doubts about the evidence. The Estimate itself expressed the majority view that the program was being reconstituted, but included clear dissenting views from the State Department's Bureau of Intelligence and Research, which argued that reconstitution was not underway, and the Department of Energy, which argued that aluminum tubes sought by Iraq were probably not intended for a nuclear program.

[39] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002.

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**Postwar Findings**

(U) Postwar findings revealed that Iraq ended its nuclear weapons program in 1991, and that Iraq's ability to reconstitute a nuclear weapons program progressively declined after that date. The Iraq Survey Group (ISG) found no evidence that Saddam Hussein ever attempted to restart a nuclear weapons program, although the Group did find that he took steps to retain the intellectual capital generated during the program. That intellectual capital decayed between 1991 and 2003, however, and the ISG found no evidence that the relevant scientists were involved in renewed weapons work.

(U) Postwar findings confirmed that the high-strength aluminum tubes sought by Iraq had been intended for a conventional rocket program, and found no evidence that other dual-use technologies (magnets, high-speed balancing machines, and machine tools) were intended for use in a nuclear weapons program. Various ongoing activities at former nuclear sites were apparently unrelated to any weapons program, and construction observed at the al-Tahadi high-voltage and electromagnetic facility also had no apparent connection to any nuclear weapons program.

(U) Postwar surveys found no evidence that Iraq sought uranium from any foreign sources after 1991.[40]

[40] *Report on Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare With Prewar Assessments*, Senate Select Committee on Intelligence, Senate Report 109-331, September 8, 2006.

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**III. Biological Weapons**

- "The Iraqi regime has in fact been very busy enhancing its capabilities in the field of chemical and biological agents." - *Vice President Richard Cheney, Nashville, Tennessee, August 26, 2002*

- "What he wants is time and more time to husband his resources, to invest in his ongoing chemical and biological weapons programs, and to gain possession of nuclear arms." - *Vice President Richard Cheney, Nashville, Tennessee, August 26, 2002*

- "Right now, Iraq is expanding and improving facilities that were used for the production of biological weapons." - *President George W. Bush, Address to the United Nations General Assembly, September 12, 2002*

- "Eleven years ago, as a condition for ending the Persian Gulf War, the Iraqi regime was required to destroy its weapons of mass destruction, to cease all development of such weapons, and to stop all support for terrorist groups. The Iraqi regime has violated all of those obligations. It possesses and produces chemical and biological weapons." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "In 1995, after several years of deceit by the Iraqi regime, the head of Iraq's military industries defected. It was then that the regime was forced to admit that it had produced more than 30,000 liters of anthrax and other deadly biological agents. The inspectors, however, concluded that Iraq had likely produced two to four times that amount. This is a massive stockpile of biological weapons that has never been accounted for, and capable of killing millions." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "And surveillance photos reveal that the regime is rebuilding facilities that it had used to produce chemical and biological weapons. Every chemical and biological weapon that Iraq has or makes is a direct violation of the truce that ended the Persian Gulf War in 1991. Yet, Saddam Hussein has chosen to build and keep these weapons despite international sanctions, U.N. demands, and isolation from the civilized world." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "After eleven years during which we have tried containment, sanctions, inspections, even selected military action, the end result is that Saddam Hussein still has chemical and biological weapons, and is increasing his capabilities to make more." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "Twelve years ago, Saddam Hussein faced the prospect of being the last casualty in a war he had started and lost. To spare himself, he agreed to disarm of all weapons of mass destruction. For the next 12 years, he systematically violated that agreement. He pursued chemical, biological, and nuclear weapons, even while inspectors were in his country. Nothing to date has restrained him from his pursuit of these weapons – not economic sanctions, not isolation from the civilized world, not even cruise missile strikes

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on his military facilities." -- *President George W. Bush, State of the Union Address, January 28, 2003*

- "From three Iraqi defectors we know that Iraq, in the late 1990s, had several mobile biological weapons labs. These are designed to produce germ warfare agents, and can be moved from place to a place to evade inspections. Saddam Hussein has not disclosed these facilities. He's given no evidence that he has destroyed them." – *President George W. Bush, State of the Union Address, January 28, 2003*

- "We know, we know from sources that a missile brigade outside Baghdad was dispersing rocket launchers and warheads containing biological warfare agent to various locations, distributing them to various locations in western Iraq.... Most of the launchers and warheads had been hidden in large groves of palm trees and were to be moved every one to four weeks to escape detection." - *Secretary of State Colin Powell, Speech to the United Nations Security Council, February 5, 2003.*

- "One of the most worrisome things that emerges from the thick intelligence file we have on Iraq's biological weapons is the existence of mobile production facilities used to make biological agents." - *Secretary of State Colin Powell, Speech to the United Nations Security Council, February 5, 2003.*

- "Let me take you inside that intelligence file and share with you what we know from eyewitness accounts. We have first-hand descriptions of biological weapons factories on wheels and on rails." - *Secretary of State Colin Powell, Speech to the United Nations Security Council, February 5, 2003.*

- "The trucks and train cars are easily moved and are designed to evade detection by inspectors. In a matter of months, they can produce a quantity of biological poison equal to the entire amount that Iraq claimed to have produced in the years prior to the Gulf War." - *Secretary of State Colin Powell, Speech to the United Nations Security Council, February 5, 2003.*

- "Although Iraq's mobile production program began in the mid-1990s, UN inspectors at the time only had vague hints of such programs. Confirmation came later, in the year 2000. The source was an eyewitness, an Iraqi chemical engineer who supervised one of these facilities. He actually was present during biological agent production runs. He was also at the site when an accident occurred in 1998. 12 technicians died from exposure to biological agents." - *Secretary of State Colin Powell, Speech to the United Nations Security Council, February 5, 2003.*

- "A second source. An Iraqi civil engineer in a position to know the details of the program confirmed the existence of transportable facilities moving on trailers." - *Secretary of State Colin Powell, Speech to the United Nations Security Council, February 5, 2003.*

- "A third source, also in a position to know, reported in summer, 2002, that Iraq had manufactured mobile production systems mounted on road-trailer units and on rail cars."

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- *Secretary of State Colin Powell, Speech to the United Nations Security Council, February 5, 2003.*

- "Finally, a fourth source. An Iraqi major who defected confirmed that Iraq has mobile biological research laboratories in addition to the production facilities I mentioned earlier." *- Secretary of State Colin Powell, Speech to the United Nations Security Council, February 5, 2003.*

- "We know that Iraq has at least seven of these mobile, biological agent factories." *- Secretary of State Colin Powell, Speech to the United Nations Security Council, February 5, 2003.*

- "Ladies and gentlemen, these are sophisticated facilities. For example, they can produce anthrax and botulinum toxin. In fact, they can produce enough dry, biological agent in a single month to kill thousands upon thousands of people." *- Secretary of State Colin Powell, Speech to the United Nations Security Council, February 5, 2003.*

- "Saddam Hussein has investigated dozens of biological agents causing diseases such as gas gangrene, plague, typhus, tetanus, cholera, camelpox, and hemorrhagic fever. And he also has the wherewithal to develop smallpox." *- Secretary of State Colin Powell, Speech to the United Nations Security Council, February 5, 2003.*

- "There can be no doubt that Saddam Hussein has biological weapons and the capability to rapidly produce more, many more. And he has the ability to dispense these lethal poisons and diseases in ways that can cause massive death and destruction." *- Secretary of State Colin Powell, Speech to the United Nations Security Council, February 5, 2003.*

- "We also have sources who tell us that since the 1980s, Saddam's regime has been experimenting on human beings to perfect its biological or chemical weapons." *- Secretary of State Colin Powell, Speech to the United Nations Security Council, February 5, 2003.*

***Vice President's Speech in Tennessee (August 26, 2002)***

**(U)** The Vice President's speech stated generally that Iraq had been "enhancing its capabilities in the field of" biological agents and that Saddam Hussein wanted "time and more time to husband his resources [and] to invest in his ongoing ... biological weapons programs."

**(U)** The intelligence community produced a number of coordinated and single-agency reports on Iraq's biological weapons program after United Nations inspectors left Iraq in the 1990s. One such report was the December 2000 Intelligence Community Assessment (ICA) on Iraq's weapons of mass destruction programs. The ICA noted that "Our main judgment about what

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remains of Iraq's original WMD programs, agents stockpiles, and delivery systems have changed little: Iraq retains stockpiles of chemical and biological agents and munitions."[41]

[redacted] The ICA also judged that Iraq had largely rebuilt its biological weapons facilities that raised analysts' concern about Iraq's intentions, but could not determine "whether Iraq is diverting these or other of its many pharmaceutical, vaccine, or pesticide plants to produce BW agents." Similarly, the ICA reported that [redacted] Iraq had built a new castor oil plant that "could easily" be used to produce the toxin ricin.

(U) Consistent with most contemporaneous intelligence reports, the ICA reported that UN inspectors, and the intelligence community, did not believe that Iraq had destroyed its previous biological weapons and agent. It also assessed that Iraq had "taken steps to bolster" its biological weapons research and development program.

(U) While the Vice President's speech did not reference the mobile biological laboratories, the biological weapons section of the ICA began with such biological weapons production plants. This portion of the ICA was based on "credible US military reporting from a single source" who was described in the Committee's previous report as being the asylum seeker codenamed "CURVEBALL."[42] The ICA, like other finished intelligence at the time, did not cite the source by name. The ICA cited this source as saying that Iraq had "developed a clandestine production capability ... which has the potential to turn out several hundred tons of unconcentrated BW agent per year." According to the source, Iraq had constructed seven transportable biological weapons plants.

(U) An August 10, 2001 CIA assessment, *Developing Biological Weapons as a Strategic Deterrent*, stated that "Iraq is attempting to address its regional security concerns by developing weapons of mass destruction and is focusing on biological warfare (BW) agents as a strategic deterrent to its enemies' conventional and non- conventional forces." The agency assessed that "Iraq does not require outside assistance to produce BW, which can be easily hidden from weapons inspectors and national technical collection means." The paper also said, "we assess Baghdad already has a thriving biological weapons program to augment any stockpiles it hid from weapons inspectors."[43]

(U) A December 15, 2001 CIA report, *The Iraqi Threat*, stated that "Iraq maintains an active and capable BW program that includes research, production, and weaponization of BW agents." The paper assessed that anthrax and botulinum were the most likely candidate agents for weaponization.[44]

(U) An August 2002 DIA assessment, *Iraq: Biological Warfare Program Handbook*, judged that:

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[41] December 2000 Intelligence Community Assessment, (U) Iraq: Steadily Pursuing WMD Capabilities. ICA 2000-007HCX.

[42] See Senate Select Committee on Intelligence, *U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, July 2004, p. 144.

[43] August 10, 2001 CIA intelligence assessment, *Developing Biological Weapons as a Strategic Deterrent* (CIANESAF IA 2001-20072J)

[44] A December 15, 2001 SPWR, *The Iraqi Threat* (SPWR121501-07)

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> Iraq is assessed to have an active BW research and development program. Baghdad has reportedly rebuilt its full offensive BW program in well-concealed, underground, mobile or difficult-to-locate facilities applying lessons learned during the former UNSCOM inspection process to prevent penetration by foreign intelligence services. The Iraqi biological warfare (BW) program is assessed to continue today despite Iraq's claims to have destroyed its BW agents and weapons completely in 1991.
>
> Numerous sources have stated that Iraq still has stockpiles of BW agents. DIA cannot rule out Iraqi possession of agents produced before or during Operation Desert Storm or in the years since the Gulf War.

(U) This DIA paper also repeated assessments that Iraq "may retain" biological weapons munitions; that it "has maintained or developed the indigenous capability to almost completely support its BW program;" and that Iraq did not adequately cooperate with UN inspectors.[45]

***President's Speech to the UN General Assembly (September 12, 2002)***

(U) The President commented in his September 2002 speech to the United Nations that "Iraq is expanding and improving facilities that were used for the production of biological weapons."

(U) This statement is consistent with those in the Vice President's August 2002 speech described above.

***President's Speech in Cincinnati (October 7, 2002)***

(U) The President's Cincinnati speech included statements that Iraq "possesses and produces" biological weapons and mentioned "surveillance photos" of rebuilt facilities. He cited Iraqi admissions that it had previously produced more than 30,000 liters of biological agents, and that UN inspectors' views were that Iraq "likely produced two to four times that amount" that had not been accounted for. The President also stated that Saddam Hussein was "increasing his capabilities to make more" such weapons.

(U) The October 2002 Iraq weapons of mass destruction NIE was issued shortly prior to the Cincinnati speech. It represented a shift in the IC's judgments about Iraq's biological weapons program from what had been presented in previous reports, and did not contain the uncertainties that were expressed in previous IC assessments about what was known about the BW program.[46] The NIE's key judgments were that all key elements of Iraq's biological weapons program were active and more advanced than before the Gulf War. The judgments specifically stated that:

[45] August 2002 DIA assessment, *Iraq: Biological Warfare Program Handbook* (DI-1650-63-02).
[46] For more discussion on the changes between the 2002 NIE and previous reports, see Senate Select Committee on Intelligence, *U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, July 2004.

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- We judge Iraq *has* some lethal and incapacitating BW agents and is capable of quickly producing and weaponizing a variety of such agents, including anthrax, for delivery by bombs, missiles, aerial sprayers, and covert operatives (emphasis added);
- Baghdad has established a large-scale, redundant, and concealed BW agent production capability; and
- Baghdad has mobile facilities for producing bacterial and toxin BW agents; these facilities can evade detection and are highly survivable. Within several days these units probably could produce an amount of agent equal to the total that Iraq produced in the years prior to the Gulf war.[47]

(U) The body of the NIE noted that "Iraq's BW program, however, continues to be difficult to penetrate and access" and stated that "we do not have specific information on the types of weapons, agent, or stockpiles Baghdad has at its disposal."[48]

(U) The NIE included a passage that "Only after UNSCOM confronted Baghdad with irrefutable evidence of excessive growth media procurement did Iraq admit that it had an offensive BW program and had made 30,000 liters of concentrated biological weapons agents. Even then, UNSCOM estimates that Iraq's production of anthrax spores and botulinum toxin could have been two to four times higher than claimed by Baghdad."[49]

(U) The President's statement on "surveillance photos" of rebuilt facilities was not specific, but the October 2002 NIE included two images of possible BW facilities and text that those, and other, facilities had been renovated or expanded.

(U) Other assessments produced by the Intelligence Community prior to the President's speech also contained assessments that Iraq possessed and was producing biological weapons and was increasing its capabilities in this regard.

***President's State of the Union Address (January 28, 2003)***

(U) In this speech, the President repeated the statement that Iraq had pursued biological weapons and continued to do so. These statements are consistent with those discussed above.

(U) Two notable intelligence products on Iraq's biological weapons program were issued between the President's Cincinnati speech and the State of the Union address. A November 13, 2002 CIA report assessed that "Baghdad has a broad range of lethal and incapacitating agents .... Iraq probably possesses at least 20 to 25 different microbes or toxins for possible BW use."[50] Another CIA paper, produced on January 18, 2003, repeated the central themes of the October

[47] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction,* October 1, 2002, pp. 6-7.
[48] Ibid, at 36.
[49] While not from a finished intelligence product, a briefing book prepared by the CIA in May 2002 for the Principles' Committee of the National Security Council said that "Iraq probably produced 2-to-4 times the amount of BW agent it claimed to the UN."

[50] *Iraq: Biological Warfare Agents Pose Growing Threat to US Interests* (CIAWINPAC IA 2002-060CX),

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NIE and stated that "We judge Iraq has some lethal and incapacitating BW agents and could quickly produce and weaponize many, including botulinum toxin and anthrax, for delivery by bombs, missiles, aerial sprayers, and covert operatives."[51]

**Mobile Biological Weapons Laboratories**

(U) Unlike his speeches discussed above, President Bush referred in the State of the Union to Iraq's mobile biological weapons laboratories. Citing three Iraqi defectors, the President said that "in the late 1990s, Iraq had several mobile biological weapons labs. These are designed to produce germ warfare agents, and can be moved from place to a place to evade inspections."

(U) As was described above, the intelligence community had reporting starting in March 2000 on Iraq's purported mobile biological weapons labs from the Iraqi asylum seeker known as CURVE BALL. The information came to the Defense Intelligence Agency through its relationship with a liaison service that interviewed CURVE BALL.

(U) Finished intelligence reporting on Iraq's mobile biological laboratories began in the spring of 2000 and continued through the beginning of the war. The DIA and CIA each wrote numerous reports. One early example was a May 19, 2000 DIA report, *Iraq: Biological Warfare Program*, which stated, in part:

> Baghdad reportedly has developed mobile biological agent production facilities to mask ongoing production efforts. This project, allegedly the most ambitious BW-related Iraqi denial-and-deception effort thus far, will complicate identifying Iraq's offensive BW infrastructure.[52]

(U) Similar reports were issued through 2000, with a December 2000 NIE, *Worldwide Biological Warfare Programs: Trends and Prospects - Update*, that noted:

> Earlier this year, credible reporting described construction of transportable BW agent production plants, BW agent production in some of these mobile plants, and maintenance of other fixed BW production facilities. We assess this reporting to be credible because of the specificity of the source's information and the fact that much of it has been corroborated by other intelligence. Although we cannot confirm that BW agent production is under way at this time, the existence of transportable BW agent plants and other fixed facilities gives Iraq the capability to produce BW agents on demand.

[51] January 18, 2003 SPWR, *Terrorism: CBRN Capabilities of Al-Qa'ida and Iraq and the Poison Network in Northeastern Iran, Including Botulinum Toxin Efforts* (SPWR011803-09)
[52] May 19, 2000 DIA Military Intelligence Digest entitled, *Iraq: Biological Warfare Program*.

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(U) A December 14, 2000 joint report by the DCI Nonproliferation Center, the National Imagery Mapping agency (NIMA, now known as the National Geospatial Intelligence Agency, or NGA), and the DIA entitled, *New Evidence of Continuing Iraq Biological Warfare,*[53] stated:

> A source seeking asylum in the West has provided details of a continuing offensive bio- logical warfare (BW) program in Iraq. The source described not only maintenance of known BW-related facilities but also construction of transportable BW agent production plants and production of BW agents in these plants beginning in 1997. Although we cannot confirm that BW agent production is under way, the Intelligence Community (IC) assesses this reporting to be credible because the source has provided a wealth of specific detail, much of which we have been able to corroborate with other intelligence. This Defense Humint Service reporting has provided significant insights into many facets of Iraq's BW program. Despite a decade of international efforts to disarm Iraq, the new information suggests that Baghdad has continued its offensive BW program by establishing a large-scale, redundant, and concealed BW agent production capability.

(U) An October 10, 2001 CIA assessment estimated that the mobile laboratories could "far exceed the approximately 300,000 liters of unconcentrated agent it declared to have produced during the entire length of its BW program before the Gulf war."[54]

(U) The reports on Iraq's mobile laboratories were primarily based on CURVE BALL, but some referred to corroborating sources or intelligence. In April 2002, Vanity Fair wrote an article on one of the sources, Iraqi Major General al-Assaf. This article, perhaps along with other public events involving this source, prompted two April CIA papers. The first stated that the "[t]he defector passed a DIA-administered polygraph, but the DIA debriefer expressed concern that Al-Assaf was being coached by INC [the Iraqi National Congress] to further its political agenda."[55] The second report noted that "[the Defense HUMINT Service] terminated contact with al-Assaf after four sessions because of suspicions he was a fabricator."[56] Al-Assaf was determined by DIA to be a fabricator in May 2002. The agency issued a fabrication notice saying that "his information is assessed as unreliable and, in some instances, pure fabrication."

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[53] December 14, 2000 DCI special intelligence report, *New Evidence of Continuing Iraqi Biological Warfare Program* (DCINPC SIR 2000-003 X)

[54] October 10, 2001 CIA WINPAC intelligence assessment, *Mobile Biological Warfare Agent Production Capability* (CIAWINPAC IA 2001-050 X)

[55] April 8, 2002, CIA SPWR, *Iraqi defector in the New York Daily News Article*, SPWR040802-01.

[56] The report also noted that "The British Secret Intelligence Service (SIS) also debriefed al-Assaf and assessed that he fabricated at least some of his information" but indicated that "another defector, deemed credible by the Intelligence Community, has provided more detailed information on Iraq's development of mobile BW production facilities." April 22, 2002, CIA SPWR, *Assessment of the Iraqi defector Cited in the Vanity Fair article on Iraqi WMD*, SPWR042202-02. The first report stated that Assaf's reporting "may be accurate" and the second stated that it was "plausible but lacks specifics." Both reports indicated that Assaf could have obtained this information from public sources.

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(U) Despite the fabrication notice, the October 2002 Iraq WMD NIE cited four sources (not three as was included in the President's speech the following January) of the mobile biological lab intelligence, including al-Assaf by name.

(U) The October 2002 NIE said, "Baghdad has mobile facilities for producing bacterial and toxin BW agents; these facilities can evade detection and are highly survivable. Within several days these units probably could produce an amount of agent equal to the total that Iraq produced in the years prior to the Gulf war." The NIE also said, "an Iraqi defector deemed credible by the IC said seven mobile BW production units were constructed and that one began production as early as 1997."[57]

(U) Prior to the President's address, some CIA operations officers had doubts about the credibility of CURVE BALL and debated the point at high levels within the Directorate of Operations. Additionally, on December 20, 2002, the Chief of the relevant station cabled CIA headquarters to describe a meeting that day with the head of the foreign intelligence service handling CURVE BALL. The cable summarized the meeting and noted that the head of the service wrote a letter to the DCI to the effect that CURVEBALL's reporting on mobile facilities "has not been verified." The CIA station did not send the actual letter from the head of the foreign intelligence service to CIA headquarters until February 5, 2003. On January 27, 2003, the same Chief of Station cautioned CIA headquarters in another cable to "take the most serious consideration" before using CURVEBALL's information publicly. The Committee has found no evidence that then-Director Tenet or policymakers were informed of the doubts that some Intelligence Community officers had about CURVEBALL's reliability or about concerns with using CURVEBALL's information publicly.

*Secretary of State's Address to the UN Security Council (February 5, 2003)*

(U) Secretary Powell's presentation delved into greater detail on Iraq's biological weapons program and capabilities. He said there "can be no doubt" that Iraq possessed biological weapons and discussed their means for delivery. He stated that rocket launchers and warheads containing biological warfare agent were dispersed to various locations, many of them hidden in large groves of palm trees, and moved every one to four weeks to escape detection.

(U) Secretary Powell described the mobile labs in great detail. He cited sources with "first-hand descriptions" of the factories, and described four human sources in terms of their professions and access to the information. Powell stated that the labs – "at least seven" in number – on truck and rail cars "can produce a quantity of biological poison equal to the entire amount that Iraq claimed to have produced in the years prior to the Gulf War."

(U) Secretary Powell specified that the mobile labs can produce anthrax and botulinum toxin, and that overall, "Saddam Hussein has investigated dozens of biological agents causing diseases such as gas gangrene, plague, typhus, tetanus, cholera, camelpox, and hemorrhagic fever. And he also has the wherewithal to develop smallpox."

[57] The National Intelligence Council subsequently notified recipients of the NIE that the term "several days" was an error and should be replaced with "three to six months."

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(U) Finally, Powell referenced human sources that told the intelligence community that Iraq had experimented with biological weapons on human beings.

(U) In addition to the intelligence assessments described above, reports relevant to whether specific claims in the February 5 speech were substantiated by the intelligence are described below.

(U) The DIA issued a report in February 2003, *Iraq: Denial and Deception: Iraqi Countertargeting Strategy*, that stated it was standard denial and deception practice for Iraq to place various military hardware in, among other things, "palm and date tree groves...," but this report was issued after Secretary Powell's speech and did not mention biological weapons. There was operational intelligence traffic on this issue prior to the Secretary's speech, but the Committee is not aware of prior analytical assessments.

(U) The number of mobile labs – "at least seven" – was included in, among other reports, the December 2000 ICA and October 2002 NIE as described above. Multiple reports described seven mobile production facilities and provided schematic details on two- or three-railcar systems.

(U) Secretary Powell stated that Iraq has investigated dozens of biological agents, and named eight specifically. All eight were included, along with 13 others, in a list in the October 2002 NIE entitled, "BW Agents that Iraq has researched." A report produced by CIA WINPAC on November 13, 2002 said that "Iraq probably possesses at least 20 to 25 different microbes or toxins for possible BW use."[58] The same report had noted that Iraq "has the capability to produce sufficient quantities [of smallpox] for use in various delivery systems."[59] Numerous other intelligence assessments discussed Iraq's capability to produce smallpox and other biological agents.

(U) On the topic of human testing, the October 2002 NIE stated that "A former Directorate of General Security officer said that 1,600 death row prisoners in 1995 were transferred "to the Haditha area" for CBW testing—probably to the Qadisiyah complex—from Baghdad prisons. Inmate transfer files from 1995 were missing during UNSCOM inspections of the Baghdad prisons in 1998, adding weight to the source's claim."

**Additional Statements**

- "So, we know that he has stored the biological weapons. We know that he has used chemical weapons. And we know that he has looked for ways to weaponize those and deliver them. – *National Security Advisor Condoleezza Rice, Late Edition, September 8, 2002*

[58] November 13, 2002 CIA WINPAC assessment, *Iraq: Biological Warfare Agents Pose Growing Threat to US Interests* (CIAWINPAC IA 2002-060CX).
[59] Ibid.

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- "But I can say obviously that they have had an enormous appetite for weapons, biological weapons and chemical weapons. They've taken these capabilities and weaponized them. They are continuing to do so today. They are looking not only at a variety of biological capabilities, but at a variety of ways of dispensing or weaponizing them so that they have a range of choices with respect to it." – *Secretary of Defense Donald Rumsfeld, Testimony before the House Armed Services Committee, September 18, 2002*

- "His regime has amassed large clandestine stocks of biological weapons, including anthrax and botulinim toxin and possibly smallpox. – *Secretary of Defense Donald Rumsfeld, Testimony before the House Armed Services Committee, September 18, 2002.*

- "They have amassed large clandestine stocks of biological weapons including anthrax and possibly smallpox." – *Secretary of Defense Donald Rumsfeld, Atlanta Chamber of Commerce, September 27, 2002*

- "[The Iraqi declaration has] no information about Iraq's mobile biological-weapons production facilities. And, very disturbingly, Iraq has not accounted for some two tons of anthrax growth media." – *Deputy Secretary of Defense Paul Wolfowitz, Address to Council on Foreign Relations, January 1, 2003*

- "The December 7, 2002 declaration was padded with reams of extraneous material, but failed to address scores of questions pending since 1998. It seeks to deceive when it says that Iraq has no ongoing WMD programs. Illustrative examples – but not a complete list – of Iraq's omissions identified as issues by UNSCOM include ...tens of thousands of liters of unaccounted biological agents." – *President George W. Bush, Report on Matters Relevant to the Authorization for Use of Military Force Against Iraq Resolution of 2002, January 20, 2003*

- "Where is the evidence that Iraq has destroyed the tens of thousands of liters of anthrax and botulinum we know it had before it expelled the previous inspectors? This isn't an American determination. This is the determination of previous inspectors... What happened to the three metric tons of growth material that Iraq imported which can be used for producing early, in very rapid fashion, deadly biological agents? Where the mobile vans that are nothing more than biological laboratories on wheels?" – *Secretary of State Colin Powell, remarks at the World Economic Forum, January 26, 2003*

- Firsthand witnesses have informed us that Iraq has at least seven mobile factories for the production of biological agents -- equipment mounted on trucks and rails to evade discovery. – *President Bush, February 8, 2003, Radio address*

(U) These statements were consistent with the intelligence described above.

**Conclusions**

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**(U) Conclusion 2: Statements in the major speeches analyzed, as well additional statements, regarding Iraq's possession of biological agent, weapons, production capability, and use of mobile biological laboratories were substantiated by intelligence information.** Intelligence assessments from the late 1990s through early 2003 consistently stated that Iraq retained biological warfare agent and the capability to produce more. Assessments on the mobile facilities included the production capabilities of those labs, both in terms of type of agent and in amount. Prior to the October 2002 NIE, some intelligence assessments left open the question as to whether Iraq possessed biological weapons or that it was actively producing them, though other assessments did not present such uncertainties. Policymakers did not discuss intelligence gaps in Iraq's biological weapons programs, which were explicit in the October 2002 NIE.

**Postwar Intelligence**

(U) The postwar review by the Iraq Survey Group (ISG) determined that Iraq was not conducting biological weapons production on research after 1996.[60] The ISG determined that depending on its scale, Iraq could have re-established an elementary BW program within a few weeks to months of a decision to do so, but found no indications that Iraq was pursuing this option.[61]

(U) The ISG found "no evidence that Iraq possessed, or was developing BW agent production systems mounted on road vehicles or railway wagons."[62]

(U) The Committee's report, "Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments" described the postwar findings on CURVE BALL. It noted that the ISG "harbors severe doubts about the source's credibility." The CIA and DIA issued a joint congressional notification in June 2004 noting that CURVE BALL was assessed to have fabricated his claimed access to a mobile BW production project and that his reporting had been recalled.[63]

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[60] Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD, Biological Section, p.1.
[61] Ibid, p.2.
[62] Ibid.
[63] CIA and DIA Congressional Affairs Notification, June 7, 2004.

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**IV. Chemical Weapons**

- "The Iraqi regime has in fact been very busy enhancing its capabilities in the field of chemical and biological agents. And they continue to pursue the nuclear program they began so many years ago." - *Vice President Richard Cheney, Nashville, Tennessee, August 26, 2002*

- "What he wants is time and more time to husband his resources, to invest in his ongoing chemical and biological weapons programs, and to gain possession of nuclear arms." - *Vice President Richard Cheney, Nashville, Tennessee, August 26, 2002*

- "United Nations' inspections also revealed that Iraq likely maintains stockpiles of VX, mustard and other chemical agents, and that the regime is rebuilding and expanding facilities capable of producing chemical weapons." - *President George W. Bush, Address to the United Nations General Assembly, September 12, 2002*

- "We know that the regime has produced thousands of tons of chemical agents, including mustard gas, sarin nerve gas, VX nerve gas. Saddam Hussein also has experience in using chemical weapons. He has ordered chemical attacks on Iran, and on more than forty villages in his own country. These actions killed or injured at least 20,000 people, more than six times the number of people who died in the attacks of September the 11th." *- President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "Eleven years ago, as a condition for ending the Persian Gulf War, the Iraqi regime was required to destroy its weapons of mass destruction, to cease all development of such weapons, and to stop all support for terrorist groups. The Iraqi regime has violated all of those obligations. It possesses and produces chemical and biological weapons." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "And surveillance photos reveal that the regime is rebuilding facilities that it had used to produce chemical and biological weapons. Every chemical and biological weapon that Iraq has or makes is a direct violation of the truce that ended the Persian Gulf War in 1991. Yet, Saddam Hussein has chosen to build and keep these weapons despite international sanctions, U.N. demands, and isolation from the civilized world." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "After eleven years during which we have tried containment, sanctions, inspections, even selected military action, the end result is that Saddam Hussein still has chemical and biological weapons, and is increasing his capabilities to make more." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "Twelve years ago, Saddam Hussein faced the prospect of being the last casualty in a war he had started and lost. To spare himself, he agreed to disarm of (sic) all weapons of mass destruction. For the next 12 years, he systematically violated that agreement. He pursued chemical, biological, and nuclear weapons, even while inspectors were in his country. Nothing to date has restrained him from his pursuit of these weapons – not

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economic sanctions, not isolation from the civilized world, not even cruise missile strikes on his military facilities." – *President George W. Bush, State of the Union Address, January 28, 2003*

- "Our intelligence officials estimate that Saddam Hussein had the materials to produce as much as 500 tons of sarin, mustard and VX nerve agent. In such quantities, these chemical agents could also kill untold thousands. He's not accounted for these materials. He has given no evidence that he has destroyed them." – *President George W. Bush, State of the Union Address, January 28, 2003*

- U.S. intelligence indicates that Saddam Hussein had upwards of 30,000 munitions capable of delivering chemical agents. Inspectors recently turned up sixteen of them – despite Iraq's recent declaration denying their existence. Saddam Hussein has not accounted for the remaining 29,984 of these prohibited munitions. He's given no evidence that he has destroyed them." - *President George W. Bush, State of the Union Address, January 28, 2003*

- "We know that Iraq has embedded key portions of its illicit chemical weapons infrastructure within its legitimate civilian industry." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "Under the guise of dual-use infrastructure, Iraq has undertaken an effort to reconstitute facilities that were closely associated with its past program to develop and produce chemical weapons." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "Iraq's procurement efforts include: equipment that can filter and separate microorganisms and toxins involved in biological weapons; equipment that can be used to concentrate the agent; growth media that can be used to continue producing anthrax and botulinum toxin; sterilization equipment for laboratories; glass-lined reactors and specialty pumps that can handle corrosive chemical weapons agents and precursors; large amounts of thionyl chloride, a precursor for nerve and blister agents; and other chemicals such as sodium sulfide, an important mustard agent precursor." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "Our conservative estimate is that Iraq today has a stockpile of between 100 and 500 tons of chemical weapons agent. That is enough agent to fill 16,000 battlefield rockets. Even the low end of 100 tons of agent would enable Saddam Hussein to cause mass casualties across more than 100 square miles of territory, an area nearly five times the size of Manhattan." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "Saddam Hussein has chemical weapons. Saddam Hussein has used such weapons. And Saddam Hussein has no compunction about using them again – against his neighbors and against his own people. And we have sources who tell us that he recently has authorized his field commanders to use them. He wouldn't be passing out the orders if he didn't

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have the weapons or the intent to use them." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "We also have sources who tell us that since the 1980s, Saddam's regime has been experimenting on human beings to perfect its biological or chemical weapons." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

***Vice President's Speech in Tennessee (August 26, 2002)***

(U) In the Vice President's August 2002 speech on Iraq, he stated that Iraq has been "busy enhancing its capabilities in the field of chemical" agents and that Saddam Hussein wanted "time and more time to husband his resources [and] to invest in his ongoing chemical" weapons program.

(U) The Committee reviewed prewar intelligence assessments in its July 2004 report, *U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*. That report described a December 2000 Intelligence Community Assessment (ICA), *Iraq: Steadily Pursuing WMD Capabilities*, which represented the first comprehensive, coordinated report on all aspects of Iraq's WMD capabilities since United Nations (UN) inspectors departed Iraq.

(U) The ICA stated that "Iraq's expansion of its chemical industry is intended to support CW production" but that "we have seen no indication since the Gulf War that Iraq has engaged in large-scale production of CW agents, but we cannot rule out that small-scale production has occurred."

(U) The ICA judged that "We believe that Iraq has chemical agent and stable intermediaries in bulk storage, production equipment, and filled munitions that are still militarily useful." And that "[w]e assess the size of the CW agent stockpile to be 100 tons or less. We are uncertain about the extent and condition of Iraq's stockpile, although we believe mustard agent – and to a lesser degree G-agents Sarin and VX – and related munitions probably are key components." The ICA noted that the available intelligence "suggests that a small portion of Iraq's prewar stockpile of filled munitions remains. Iraq also retains the capability to produce many types of weapons that could be filled with chemical agents."

[redacted] The intelligence produced between the December 2000 ICA and the Vice President's August 2002 speech tended to reiterate and confirm the ICA views. For example, a December 14, 2001 DIA assessment stated that "Saddam Husayn will continue to pursue a chemical weapons (CW) program to help ensure his personal survival and the survival of his regime, and to increase respect for Iraq as a regional power." It also stated that "Iraq is assessed to hold 100 metric tons of chemical agents or less in bulk storage and filled munitions."[64] The same assessment noted that DIA cannot confirm whether Iraq is currently producing chemical agents, or whether Baghdad has decided to re-establish a large-scale CW production capability. However, "we assess that Iraq has plans to re-establish such a capability." And "DIA judges that

[64] DIA, *Iraq: Chemical Warfare Program Handbook*, December 14, 2001 (DI-1650-57-01).

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Saddam Husayn's goal is to re-establish a robust chemical weapons (CW) program." Also in December, the CIA wrote a Senior Executive Memorandum which stated that "[redacted] Iraq in the past several years has rebuilt a covert chemical weapons production capability by reconstructing dual-use industrial facilities and developing new chemical plans.[65]

(U) A January 2002 Defense Intelligence Assessment, *Iraq's Weapons of Mass Destruction and Theater Ballistic Missile Programs: Post-11 September*, stated "DIA cannot confirm with confidence that Iraq has successfully restarted an offensive CW program. However, if it has, Iraq probably can produce mustard, sarin or GF, and VX, though mustard may be the only agent it can produce without external resources."[66] The assessment also commented on the possibility of using dual use facilities to produce chemical weapons agent, noting that "DIA cannot state with confidence the composition or total output of chemical products at (Iraq's suspected CW) facilities, but production lines are currently operational... Currently, DIA cannot identify where the CW center of gravity exists, but it could be hidden in dual-use and industrial facilities."

[redacted] The question of Iraq's production capabilities was also addressed in a May 16, 2002 CIA report, *Iraq: Seeking To Expand CW Production Capability*. This report assessed that "Iraq in the past three years has sought foreign equipment and chemicals that would give it the capability to produce chemical warfare (CW) agents for a limited strategic stockpile, according to [redacted] reporting." The report went on to state that "Small-scale chemical agent production, probably of mustard, sarin, GF, and VX, could be hidden within Iraq's legitimate chemical industry. Baghdad has the equipment and the expertise to match its pre-Gulf war production of nerve and blister agents, but Iraq's inability to produce key precursors could limit nerve agent production."[67]

(U) On August 1, 2002, the CIA prepared another assessment which said, "Iraq probably has rebuilt a covert CW production capability by expanding its chemical industry. It is rebuilding former CW facilities, developing new chemical plants, and trying to procure CW-related items covertly. We judge it has the capability to produce mustard blister agent and the nerve agents sarin, GF, and VX. Iraq's CW agent production capability probably is more limited than it was at the time of the Gulf war.[68]

(U) Thus while the intelligence community believed that the Iraqi regime had retained some chemical weapons and had worked to develop the capability to produce new chemical weapons at unknown levels within its civilian chemical infrastructure. The Intelligence Community had not reached conclusions on whether Iraq had actually begun production of chemical weapons.

***President's Speech to the UN General Assembly (September 12, 2002)***

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[65] CIA, SPWR, *The Iraqi Threat*, December 15, 2001 (SPWR121501-07).
[66] DIA, *Iraq's Weapons of Mass Destruction and Theater Ballistic Missile Programs: Post-11 September*, January 2002 (DI- 1 600-50Q-02-SCI).
[67] CIA SEIB, *Iraq: Seeking To Expand CW Production Capability*, May 16, 2002 (PASS SEIB 02-114 CHX).
[68] CIA, Iraq: Expanding WMD Capabilities Post Growing Threat, August 1, 2002.

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(U) In the President's September 2002 speech to the United Nations General Assembly, he stated that UN inspections "revealed that Iraq likely maintains stockpiles of VX, mustard and other chemical agents." This statement was consistent with the statements and intelligence above.

(U) The President's statement that Iraq was "rebuilding and expanding facilities capable of producing chemical weapons" suggests more confidence in Iraq's progress than the intelligence assessments at the time. In addition to the reports described earlier, a July 22, 2002 CIA assessment noted that "Iraq has rebuilt destroyed CW-related and civilian facilities while building a number of new, ostensibly civilian chemical production facilities. Although CIA does not know the function of these new facilities, chemical precursors and, in some cases, agent production could be conducted at dual-use chemical facilities.[69] An April 2002 CIA paper noted that "Iraq has obtained technical and logistical support ... to rehabilitate its industrial chemical industry and potentially to rebuild its CW program. Most ... assistance has involved the reconstruction of the chlorine facility at Al Tareq. ... Al Tareq probably is still connected to Iraq's CW program and could be converted quickly to CW precursor production."[70]

(U) The September DIA report had written on this topic that "Iraq retains all the chemicals and equipment to produce the blister agent mustard but its ability for sustained production of G-series nerve agents and VX is constrained by its stockpile of key chemical precursors and by the destruction of all known CW production facilities during Operation Desert Storm and during subsequent UNSCOM inspections. In the absence of external aid, Iraq will likely experience difficulties in producing nerve agents at the rate executed before Operation Desert Storm" and that "Baghdad is rebuilding part of its chemical production infrastructure under the guise of a civilian need for pesticides, chlorine, and other legitimate chemical products, giving Iraq the potential for a small 'breakout' production capability."[71]

***President's Speech in Cincinnati (October 7, 2002)***

(U) The President discussed chemical weapons in greater detail at his Cincinnati speech of October 2002. He stated that "we know" that Iraq "has produced thousands of tons of chemical agents, including mustard gas, sarin nerve gas, VX nerve gas" and that Iraq has used chemical weapons before. The President stated that the Iraqi regime "possesses and produces chemical" weapons. He cited "surveillance photos" of rebuilding at facilities that had previously been used to produce chemical weapons.

(U) A September 2002 DIA report stated that "There is no reliable information on whether Iraq is producing and stockpiling chemical weapons, or where Iraq has --or will--establish its chemical warfare agent production facilities." The same report, however, also said that "Iraq likely has resumed some chemical and biological agent production, but we lack conclusive proof due to Iraq's effective national-level denial and deception (D&D) program."[72]

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[69] Iraq: Ensuring CBW Survivability, July 22, 2002, p.2.
[70] Iraq: Chemical Warfare Program Profiting From Equipment and Chemical Transfers, April 2002, p.1.
[71] The DIA included similar language in a November 2002 report described later in this report.
[72] DIA, Iraq - Key WMD Facilities - An Operational Support Study 2900-511-02, September 2002.

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(U) Intelligence community products clearly stated that Iraq had produced large volumes of chemical agents in the past, during and after its war with Iran. The intelligence community also agreed that Iraq had used chemical weapons before, against Iran in the 1980s and against Iraqi Kurds. As stated above, intelligence products prior to this speech but before the October 2002 NIE assessed that Iraq possessed chemical weapons - 100 metric tons of chemical agents or less in bulk storage and filled munitions. Director Tenet's testimony to Senate committees in September 2002 stated that "We assess that Iraq retains a stockpile of at least 100 tons of agent" but did not state an upper end for the estimate.[73]

(U) Between the President's September speech to the UN and the October speech in Cincinnati, the intelligence community had produced and disseminated its October 2002 NIE on Iraq's weapons of mass destruction. In most respects, the NIE's judgments were more assertive than previous intelligence judgments, stating that "We assess that Baghdad has begun renewed production of mustard, sarin, GF (cyclosarin), and VX."

(U) On the question of chemical weapons stockpile, the NIE updated the previous assessment – 100 tons or less – to an assessment that "Saddam probably has stocked at least 100 metric tons (MT) and possibly as much as 500 MT of CW agents—much of it added in the last year." A footnote in the body of the report added that the 100 ton figure was a "conservative estimate" and that the "500-ton upper-end estimate takes into account practical bounds…." In saying that Iraq "has produced thousands of tons" of agent, the President did not give the time frame for this production or say that Iraq had this volume of agent stockpiled. The intelligence at the time did not suggest that Iraq had produced – or was producing – such quantities at the time of the speech, though Iraq had produced such quantities since the inception of its chemical weapons program. The NIE didn't specifically state how much chemical agent Iraq could produce. It did state that "Iraq's CW capability probably is more limited now than it was at the time of the Gulf war, although VX production and agent shelf life probably have been improved."

[redacted] the intelligence community had produced reports on construction and activity at suspected chemical weapons facilities, in particular the Fallujah plants. These plants also had legitimate dual-use purposes for producing chlorine, but the intelligence community assessed that plants were producing more chemicals than were needed for civilian purposes. The NIE noted that Iraq's legitimate needs were being met through authorized imports and other chlorine plants in the country, and listed other reasons to be skeptical that the plant was being used for legitimate purposes.[74]

***President's State of the Union Address (January 28, 2003)***

[73] Testimony of Director George Tenet to the Senate Armed Services Committee, September 17, 2002.
[74] October 2002 National Intelligence Estimate. The other reasons were: a concern about the plant's cover story, shallow burial of equipment for denial and deception purposes, Iraq's use of its procurement network to obtain chemical weapons precursors, and that personnel identified with the previous weapons program were linked to the facility.

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(U) In the President's State of the Union Address in January 2003, he said nothing has restrained Saddam Hussein from his pursuit of chemical weapons (along with other WMD). He cited intelligence estimates that Hussein "had the materials to produce as much as 500 tons of sarin, mustard and VX nerve agent" and a former stockpile of "upwards of 30,000 munitions capable of delivering chemical agents" that had not been accounted for.

(U) As described above, the October 2002 NIE stated that Iraq had, as an upper limit, 500 tons on chemical agent and that Iraq had renewed production of mustard, sarin, GF (cyclosarin), and VX.

(U) A November 2002 DIA report had stated that "Baghdad probably has stocked at least 100 metric tons and possibly as much as 500 metric tons of CW agents -- much of it added in the last year." That same report also contrasted with the NIE's judgment that "Baghdad has begun renewed production" of certain CW agents, saying that "No reliable information indicates whether Iraq is producing and stockpiling chemical weapons, or where the country has – or will – establish its chemical agent production facilities." The report also stated, however, that "Iraq probably has resumed some chemical and biological agent production, but no conclusive proof is available because of the effective national-level denial and deception program."[75]

(U) The Intelligence Community regularly reported that Iraq had not accounted for its previous chemical weapons or precursor stockpiles and that Iraq retained a large number of munitions capable of delivering chemical weapons. The NIE stated that "Iraq provided little verifiable evidence that it unilaterally destroyed 15,000 artillery rockets after the Gulf war."

(U) The reference to 30,000 (empty) chemical agent munitions was based on UNSCOM reporting. The Intelligence Community had provided assessments to policymakers in December 2002 and January 2003 on Iraq's WMD declarations. One assessment stated that "[The declaration] fails to address unaccounted chemical munitions disputed by the UN, including 550 155mm mustard filled artillery shells or 30,000 empty CW munitions."[76] Another, provided by the CIA in advance of Secretary Powell's speech, stated that, "Baghdad did not account for 30,000 empty prewar munitions, which leaves us concerned that Iraq retained a supply for later filling with CW agents."[77]

***Secretary of State's Address to the UN Security Council (February 5, 2003)***

(U) Secretary Powell's February 2003 speech repeated many of the statements addressed above. He stated that "we know Iraq has embedded key portions" of a chemical weapons program into its civilian industry and reconstituted facilities associated with its past weapons program. Secretary Powell addressed the intelligence on Iraq's stockpile as had been done in speeches described above, saying that "[o]ur conservative estimate is that Iraq today has a stockpile of between 100 and 500 tons of chemical weapons agent."

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[75] DIA, Iraq's Nuclear, Biological, and Chemical Weapon and Missile Programs: Progress, Prospects, and Potential Vulnerabilities DI-1569-44-02, November 2002.
[76] US Analysis of Iraq's Declaration, 7 December 2002.
[77] CIA input for Powell speech, provided to the White House in mid-January 2003.

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(U) Also described in this statement but not the others previously addressed, Secretary Powell referenced human sources who said that Saddam Hussein had authorized field commanders to use chemical weapons. He also referred to sources claims that Saddam Hussein's regime had experimented on human beings as part of its chemical weapons program.

(U) As described above, the October 2002 NIE assessed that 100 tons of chemical weapons agent was a "conservative estimate" and that Iraq could possess "possibly as much as 500 MT." A footnote to the NIE elaborated that the Intelligence Community believed that "the Iraqis are capable of producing significantly larger quantities of CW agent in some scenarios; the 500-ton upper-end estimate takes into account practical bounds, such as Iraq's limited delivery options, and approximates Iraq's stocks at the time of Operation Desert Storm."[78] According to the Committee's first report, analysts believed that the 500 ton figure was meant as an upper bound, and not as an estimate of Iraq's stockpile.[79]

(U) In two places, the October 2002 NIE states that Saddam Hussein had delegated the authority to use chemical weapons to "corps-level commanders" at the end of the Iran-Iraq war or shortly afterwards.

(U) On the topic of human testing, the October 2002 NIE stated that "A former Directorate of General Security officer said that 1,600 death row prisoners in 1995 were transferred "to the Haditha area" for CBW testing—probably to the Qadisiyah complex—from Baghdad prisons. Inmate transfer files from 1995 were missing during UNSCOM inspections of the Baghdad prisons in 1998, adding weight to the source's claim."[80]

**Other Statements**

- There's no doubt that he has chemical weapon stocks. We destroyed some after the Gulf War with the inspection regime, but there's no doubt in our mind that he still has chemical weapon stocks and he has the capacity to produce more chemical weapons. – *Secretary of State Colin Powell, Fox News Sunday, September 8, 2002.*

- "So, we know that he has stored the biological weapons. We know that he has used chemical weapons. And we know that he has looked for ways to weaponize those and deliver them. – *National Security Advisor Condoleezza Rice, Late Edition, September 8, 2002*

[78] NIE at 28.
[79] SSCI report at 206.
[80] Additional reporting on human experimentation was in a CIA SPWR (Senior Publish When Ready), Possible Experimentation on Prisoners, December 30, 2002, which reported that "Baghdad is experimenting on prisoners with toxic substances" and that Iraq had used prisoners for biological and chemical agent testing in the 1980s and 1990s.

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- "His regime has amassed large clandestine stockpiles of chemical weapons, including VX and sarin and mustard gas." – *Secretary of Defense Donald Rumsfeld, Testimony before the House Armed Services Committee, September 18, 2002.*

- "He's got chemical weapons; he needs to get rid of them, all of them." – *President George W. Bush, Remarks in Houston, Texas, September 26, 2002.*

- "They have amassed large clandestine stocks of biological weapons including anthrax and possibly smallpox. They have amassed large clandestine stockpiles of chemical weapons including VX and sarin and mustard gas. His regime has an active program to acquire and develop nuclear weapons." – *Secretary of Defense Donald Rumsfeld, Atlanta Chamber of Commerce, September 27, 2002*

- "His regime has large, unaccounted for stockpiles of chemical and biological weapons - including VX, sarin, mustard gas, anthrax, botulism, and possibly smallpox - and he has an active program to acquire and develop nuclear weapons." – *Secretary of Defense Donald Rumsfeld, Remarks to ROA, January 20, 2003*

- "The December 7, 2002 declaration was padded with reams of extraneous material, but failed to address scores of questions pending since 1998. It seeks to deceive when it says that Iraq has no ongoing WMD programs. Illustrative examples – but not a complete list – of Iraq's omissions identified as issues by UNSCOM include: 550 artillery munitions filled with mustard agent; tons of unaccounted for chemical weapons precursors; 30,000 empty chemical munitions; tens of thousands of liters of unaccounted biological agents." – *President George W. Bush, Report on Matters Relevant to the Authorization for Use of Military Force Against Iraq Resolution of 2002, January 20, 2003*

- "What happened to nearly 30,000 munitions capable of carrying chemical agents? ... Saddam should tell the truth, and tell the truth now. The more we wait, the more chance there is for this dictator with clear ties to terrorist groups, including Al-Qaida, more time for him to pass a weapon, share a technology, or use these weapons again." – *Secretary of State Colin Powell, remarks at the World Economic Forum, January 26, 2003*

(U) These statements were consistent with the intelligence described above.

**Conclusions**

**(U) Conclusion 3: Statements in the major speeches analyzed, as well additional statements, regarding Iraq's possession of chemical weapons were substantiated by intelligence information.**

Intelligence assessments, including the December 2000 ICA stated that Iraq had retained up to 100 metric tons of its chemical weapons stockpile. The October 2002 NIE provided a range of 100 to 500 metric tons of chemical weapons.

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**(U) Conclusion 4: Statements by the President and Vice President prior to the October 2002 National Intelligence Estimate regarding Iraq's chemical weapons production capability and activities did not reflect the intelligence community's uncertainties as to whether such production was ongoing.**
The intelligence community assessed that Saddam Hussein wanted to have chemical weapons production capability and that Iraq was seeking to hide such capability in its dual use chemical industry. Intelligence assessments, especially prior to the October 2002 NIE, clearly stated that analysts could not confirm that production was ongoing.

**Postwar Findings**

(U) The Committee reported on postwar findings on Iraq's chemical weapons program in its September 2006 report, *Postwar Findings about Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments*. The Committee found the following.

(U) Following the war, the Iraq Survey Group conducted its review of Iraq's weapons of mass destruction programs and found that there "were no caches of CW munitions and no single rounds of CW munitions." Additionally, "the ISG has high confidence that there are no CW present in the Iraqi inventory."[81] Some pre-1991 chemical weapons munitions have been found since the end of the combat operations.

(U) The ISG found no credible evidence indicating Iraq resumed its chemical weapons program after 1991, but said that "Saddam never abandoned his intentions to resume a CW effort when sanctions were lifted and conditions were judged favorable."[82]

(U) The ISG investigated whether Iraq had intended to produce chemical weapons through its civilian chemical industry. It found that Iraq had an inherent capability to use its civilian industry for sulfur mustard CW agents, but did not find any production units that had been configured to produce CW agents or key chemical precursors. The ISG found that Iraq did not have a capability to produce nerve agents.[83]

[81] Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD, Chemical Section at p. 123.
[82] Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD, Chemical Section at p. 1and 97.
[83] Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD, Chemical Section at p. 25.

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**V. Weapons of Mass Destruction**

- "Simply stated, there is no doubt that Saddam Hussein now has weapons of mass destruction. There is no doubt he is amassing them to use against our friends, against our allies, and against us." - *Vice President Richard Cheney, Nashville, Tennessee, August 26, 2002*

- "As former Secretary of State Kissinger recently stated: 'The imminence of proliferation of weapons of mass destruction, the huge dangers it involves, the rejection of a viable inspection system, and the demonstrated hostility of Saddam Hussein combine to produce an imperative for preemptive action.'" - *Vice President Richard Cheney, Nashville, Tennessee, August 26, 2002*

- "And our greatest fear is that terrorists will find a shortcut to their mad ambitions when an outlaw regime supplies them with the technologies to kill on a massive scale. In one place – in one regime – we find all these dangers, in their most lethal and aggressive forms, exactly the kind of aggressive threat the United Nations was born to confront." - *President George W. Bush, Address to the United Nations General Assembly, September 12, 2002*

- "Saddam Hussein's regime is a grave and gathering danger. To suggest otherwise is to hope against the evidence." - *President George W. Bush, Address to the United Nations General Assembly, September 12, 2002*

- "But Saddam Hussein has defied all these efforts and continues to develop weapons of mass destruction. The first time we may be completely certain he has a – nuclear weapons is when, God forbids, he uses one." - *President George W. Bush, Address to the United Nations General Assembly, September 12, 2002*

- "If we know that Saddam Hussein has dangerous weapons today – and we do- does it make any sense for the world to wait to confront him as he grows stronger and develops even more dangerous weapons?" - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "Saddam is harboring terrorists and the instruments of terror, the instruments of death and destruction." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "From intelligence sources we know, for instance, that thousands of Iraqi security personnel are at work hiding documents and materials from the UN inspectors, sanitizing inspection sites and monitoring the inspectors themselves." - *President George W. Bush, State of the Union Address, January 29, 2002*

- "Indeed, the facts and Iraq's behavior show that Saddam Hussein and his regime are concealing their efforts to produce more weapons of mass destruction." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

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- "Numerous human sources tell us that the Iraqis are moving not just documents and hard drives, but weapons of mass destruction, to keep them from being found by inspectors." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "We also have satellite photos that indicate that banned materials have recently been moved from a number of Iraqi weapons of mass destruction facilities." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

(U) In major policy speeches the President, the Vice President and the Secretary of State all stated that the Iraqi government possessed weapons of mass destruction. In later speeches, both the President and the Secretary of State said that the Iraqi government was engaged in a large-scale deception effort to conceal weapons of mass destruction programs from United Nations inspectors.

(U) **Scope Note:** The term 'weapons of mass destruction' (or 'WMD') is commonly used to refer collectively to nuclear, biological and chemical weapons, and this is the official Department of Defense definition.[84] No official definition existed for the intelligence community at the time of the speeches being examined, and different intelligence products have used different definitions. A substantial number of policymaker statements regarding Iraq referred generally to 'weapons of mass destruction"', without specifying whether the weapons in question were nuclear, biological, chemical, or some combination thereof. This section examines statements that refer generally to 'weapons of mass destruction', and compares them to intelligence regarding these three types of weapons. Statements regarding specific types of weapons are discussed in the other, corresponding sections of this report.

*Vice President's Speech in Tennessee (August 26, 2002)*

(U) In the Vice President's August 2002 speech on Iraq, he stated that "there is no doubt that Saddam Hussein now has weapons of mass destruction," and that "there is no doubt he is amassing them". He also quoted a former Secretary of State referencing "the imminence of proliferation of weapons of mass destruction" with regard to Iraq, and "the huge dangers it involves", as evidence that preemptive action was necessary.[85]

(U) As noted, the term 'weapons of mass destruction' is commonly used to refer collectively to nuclear, biological and chemical weapons. The intelligence community never assessed that Iraq

[84] Discussions of WMD frequently include references to ballistic missiles and other WMD delivery systems, but delivery systems by themselves are specifically excluded from the official Department of Defense definition. The Department of Defense Dictionary of Military and Associated Terms defines "weapons of mass destruction" as "Weapons that are capable of a high order of destruction and/or of being used in such a manner as to destroy large numbers of people. Weapons of mass destruction can be high-yield explosives or nuclear, biological, chemical, or radiological weapons, but exclude the means of transporting or propelling the weapon where such means is a separable and divisible part of the weapon."
[85] White House Transcript, *Vice President Speaks at VFW 103rd National Convention*, August 26, 2002.

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possessed nuclear weapons, but reached different conclusions about chemical and biological weapons.[86]

(U) In the late 1990s and early 2000s the intelligence community had consistently assessed that Iraq possessed remnants from its previous biological weapons stockpile. Some reporting also assessed that Iraq had an active biological weapons program, and that production of biological weapons was ongoing.[87]

(U) During this same time frame, intelligence assessments noted that Iraq maintained a small stockpile of pre-Gulf War chemical weapons. Some assessments stated that Iraq had developed the capability to produce new chemical weapons at unknown levels within its civilian chemical infrastructure, while other assessments were not conclusive on this point. The Intelligence Community had not reached conclusions about whether Iraq had actually begun production of chemical weapons.[88]

(U) The intelligence community's assessments regarding Iraqi possession and production of chemical and biological weapons remained consistent until the October 2002 National Intelligence Estimate.

***President's Speech to the UN General Assembly (September 12, 2002)***

(U) In the President's September 2002 address to the United Nations General Assembly, he stated that Saddam Hussein's regime was a "grave and gathering danger", and "continues to develop weapons of mass destruction." He did not state that Iraq possessed or produced weapons of mass destruction at that time.[89]

(U) Several intelligence assessments discussed Iraq's development of "weapons of mass destruction" generally. While not from a finished intelligence product, a briefing book prepared by the CIA in May 2002 for the Principals' Committee of the National Security Council said that "Iraq's activities since 1998 clearly show that it has repaired and expanded dual-use WMD facilities, increased WMD production capabilities, and advanced clandestine production and procurement." As of September 2002, intelligence community assessments stated that Iraq had worked to rebuild a chemical weapons production capacity within its civilian industry but did not state that production was ongoing. The intelligence community also assessed that Iraq maintained the capability to produce biological weapons, and the CIA assessed that production was ongoing.[90]

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[86] A summary of the intelligence community's assessments regarding nuclear weapons and Iraq can be found in the Nuclear Weapons section of this report.
[87] A summary of the intelligence community's assessments regarding biological weapons and Iraq can be found in the Biological Weapons section of this report.
[88] A summary of the intelligence community's assessments regarding chemical weapons and Iraq can be found in the Chemical Weapons section of this report.
[89] White House Transcript, *President's Remarks at the United Nations General Assembly.*
[90] National Intelligence Estimate, *Foreign Missile Developments and the Ballistic Missile Threat Through 2015*, December 2001; CIA *Iraq Seeking To Expand CW Production Capacity,* May 16, 2002; DIA *Iraq: Biological Warfare Program Handbook.*

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(U) The intelligence community did not publish a coordinated community judgment that Iraq had begun to reconstitute a nuclear weapons program until October 2002.[91] However, as discussed in the Nuclear Weapons section of this report, by September 2002 both the CIA and the DIA concluded that reconstitution had begun.[92]

*President's Speech in Cincinnati (October 7, 2002)*

(U) In the President's speech on Iraq in Cincinnati, he stated that "we know that Saddam Hussein has dangerous weapons today" and that "Saddam is harboring terrorists and the instruments of terror, the instruments of death and destruction." He also implied that Saddam was likely to develop "even more dangerous weapons."[93]

(U) The October 2002 NIE assessed with high levels of confidence that Iraq possessed both chemical and biological weapons and was continuing with active production programs. This represented a shift from previous intelligence community assessments, which concluded that Iraq probably possessed a small stockpile of chemical weapons and biological weapons. Previous community assessments did not judge that Iraq was actively producing chemical weapons, and had lower confidence that biological weapons production was ongoing. Intelligence agencies did not agree on the question of whether Baghdad was attempting to reconstitute its nuclear program, but the majority view of the NIE (which all agencies except State/INR supported) concluded that reconstitution had begun, and that Iraq would probably be able to produce a nuclear weapon in the next five to seven years.[94]

*President's State of the Union Address (January 29, 2003)*

(U) In the President's 2003 State of the Union Address, he stated that "thousands of Iraqi security personnel are at work hiding documents and materials from the UN inspectors, sanitizing inspection sites, and monitoring the inspectors themselves."[95]

(U) As of January 2003, the intelligence community had not produced a coordinated assessment regarding the Iraqi government's response to the ongoing UNMOVIC inspections. However, both the CIA and the DIA had produced multiple reports suggesting that active deception efforts were underway, and that these efforts included sanitizing weapons facilities as well as concealing

[91] The 2002 NIE represented the first collective intelligence community assessment on this topic since the December 2001 NIE, *Foreign Missile Developments and the Ballistic Missile Threat Through 2015*. The December 2001 NIE was consistent with previous assessments that Iraq did not appear to have reconstituted its nuclear weapons program.
[92] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002; Defense Intelligence Assessment *Iraq's Reemerging Nuclear Weapons Program*, September 2002; CIA *Iraq: Expanding WMD Capabilities Pose Growing Threat*, August 2002.
[93] White House Transcript, *President Bush Outlines Iraqi Threat*, October 7, 2002.
[94] Intelligence Community Assessment, *Iraq: Steadily Pursuing WMD Capabilities*, December 2000; National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002.
[95] White House Transcript, *President Delivers "State of the Union"*, January 28, 2003.

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documents and other evidence. The reports generally did not describe the number of Iraqis involved in these apparent efforts with any specificity.[96]

*Secretary of State's Address to the UN Security Council (February 5, 2003)*

(U) In the Secretary of State's February 5, 2003 address to the United Nations Security Council, he said that the Iraqi regime was actively concealing "efforts to produce more weapons of mass destruction." He stated that numerous human sources had reported that Iraqis were concealing "not just documents and hard drives, but weapons of mass destruction" from UN inspectors. He said that satellite photos "indicate that banned materials have recently been moved from a number of Iraqi weapons of mass destruction facilities."[97]

(U) A coordinated Intelligence Community Assessment (ICA) from February 2003, entitled *Iraq's Denial and Deception Capabilities* judged that Iraq successfully employed a number of denial and deception techniques against UN inspectors and US intelligence agencies. The ICA stated that these techniques included moving prohibited materials and evidence among multiple "hide sites", and that this conclusion was based on reporting from human sources and "defector testimony". The ICA also included recent satellite imagery of a storage facility that "showed the removal of possible chemical munitions from this site, almost certainly to thwart the UNMOVIC inspections conducted there."[98]

**Additional Statements**

- "Every world leader that comes to see me, I explain our concerns about a nation which is not conforming to agreements that it made in the past; a nation which has gassed her people in the past; a nation which has weapons of mass destruction and apparently is not afraid to use them." *– President George W. Bush, Press Conference, March 13, 2002*

- "And [Saddam Hussein] is a man who refuses to allow us to determine whether or not he still has weapons of mass destruction, which leads me to believe he does. He is a dangerous man who possesses the world's most dangerous weapons". *– President George W. Bush, Press Conference, March 22, 2002*

- "Simply stated, there is no doubt that Saddam Hussein now has weapons of mass destruction. There is no doubt that he is amassing them to use them against our friends, against our allies and against us. And there is no doubt that his aggressive regional ambitions will lead him into future confrontations with his neighbors; confrontations that

[96] *Iraq: Bolstering Efforts to Deceive Inspectors,* November 30, 2002; CIA, *Iraq: Moving CW Into Underground Facilities,* December 17, 2002; DIA Executive Highlight, *Iraq: Reports of Iraq concealing experts on weapons of mass destruction increased notably during the past week,* January 6, 2003; CIA, *Iraq: Undermining WMD Inspections,* January 6, 2003; DIA Executive Highlight, *Iraq: The Iraqi Intelligence Service has taken on an increased role in concealment of Iraq's weapons of mass destruction experts,* January 9, 2003.

[97] White House Transcript, *U.S. Secretary of State Colin Powell Addresses the U.N. Security Council,* February 5, 2003.

[98] Intelligence Community Assessment, *Iraq's Denial and Deception Capabilities,* February 2003.

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will involve both the weapons that he has today and the ones he will continue to develop with his oil wealth. ... In the face of such a threat, we must proceed with care, deliberation and in consultation with our allies. ...What we must not do in the face of a mortal threat is to give in to wishful thinking or to willful blindness.' – *Vice President Dick Cheney, Statement before the Veterans of the Korean War, San Antonio, Texas, August, 29, 2002*

- "I'm deeply concerned about a leader who has ignored all -- who ignored the United Nations for all these years, has refused to conform to resolution after resolution after resolution; who has weapons of mass destruction. And the battlefield has now shifted to America, so there's a different dynamic than we've ever faced before." - *President George W. Bush, Remarks at the Afghanistan Embassy, September 10, 2002*

- "I would respond this way. If failure to comply with weapons of mass destruction inspections is a casus belli, the UN already has it." – *Secretary of Defense Donald Rumsfeld, Testimony before the House Armed Services Committee, September 18, 2002*

- "...[I]t's clear from the Iraqi regime's eleven years of defiance that containment has not led to their compliance. To the contrary, containment is breaking down." – *Secretary of Defense Rumsfeld, Testimony before the House Armed Services Committee, September 18, 2002*

- "And [Saddam Hussein] has biological and chemical weapons. And he is aggressively pursuing nuclear weapons. The region knows that." – *Secretary of Defense Donald Rumsfeld, Testimony before the House Armed Services Committee, September 18, 2002*

- "[Saddam Hussein] has in place an elaborate organized system of denial and deception to frustrate both inspectors and outside intelligence efforts. ...We do know that the Iraqi regime has chemical and biological weapons of mass destruction, that they're pursuing nuclear weapons, that they've a proven willingness to use those weapons... ...We do know that Saddam Hussein has been actively and persistently pursuing nuclear weapons for more than 20 years, but we should be just as concerned about the immediate threat from biological weapons. Iraq has these weapons." - *Secretary of Defense Donald Rumsfeld, Testimony before the Senate Armed Services Committee, September 19, 2002*

- "[T]his is a man who has weapons of mass destruction and says he doesn't. He poses a serious threat to the American people." – *President George W. Bush, Remarks at OHS Complex, September 19, 2002*

- "We can have debates about the size and nature of the Iraqi stockpile of WMD and of mid- and long-range missiles. But no one can doubt the record of Iraqi violations of United Nations Security Council resolutions, one after another, and for twelve long years." – *Secretary of State Colin Powell, Testimony before the House International Relations Committee, September 19, 2002*

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- "These four years have been more than enough time for Iraq to procure, develop, and hide proscribed items well beyond the reach of the kinds of inspectors that were subject to Saddam's cheat and retreat program from 1991 to 1998." – *Secretary of State Colin Powell, Testimony before the House International Relations Committee, September 19, 2002*

- "...[N]o one can doubt that the Iraqi dictator's intentions have not changed. He wants weapons of mass destruction as clearly as he wants to remain in power." – *Secretary of State Colin Powell, Testimony before the House International Relations Committee, September 19, 2002*

- "The point is this: we know Iraq possesses biological weapons, and chemical weapons, and is expanding and improving their capabilities to produce them. That should be of every bit as much concern as Iraq's potential nuclear capability." – *Secretary of Defense Rumsfeld, Testimony before SASC, September 19, 2002*

- "For eleven years he's claimed he has had no weapons and, yet, we know he has." – *President George W. Bush, Remarks in Trenton, New Jersey, September 23, 2002*

- "We know they [the Iraqi regime] have weapons of mass destruction. We know they have active programs. There isn't any debate about it." – *Secretary of Defense Donald Rumsfeld, Department of Defense Press Conference, September 26, 2002*

- "[Saddam Hussein's] got chemical weapons; he needs to get rid of them, all of them. He's got biological weapons; he needs to destroy all of them. There's no doubt in my mind he wants to have a nuclear weapon, and he's got some capacity. I'm not saying he's got one yet, but he's developing the capacity, as we learned right after Desert Storm...The burden of proof is on Saddam Hussein." – *President George W. Bush, Remarks in Houston, Texas, September 26, 2002*

- "We can have debates about the size and nature of the Iraqi stockpile, we can have debates about how long it will take him to reach this level of readiness or that level of readiness with respect to these weapons, but no one can doubt two things: One, they are in violation of these resolutions. There's no debate about that. And secondly, they have not lost the intent to develop these weapons of mass destruction, whether they are one day, five days, one year, or seven years away from any particular weapon, whether their stockpile is small, medium or large, what has not been lost is the intent to have such weapons of mass destruction." - *Secretary of State Colin Powell, Testimony before the Senate Foreign Relations Committee, September 26, 2002*

- "The danger to our country is grave. The danger to our country is growing. The Iraqi regime possesses biological and chemical weapons." – *President George W. Bush, Statement in the Rose Garden, September 26, 2002*

- "The man who said he would get rid of weapons of mass destruction still has them. And we need to fear the fact that he has weapons of mass destruction. He's used them before.

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He's used them on his own people before. He's invaded two countries. He's lied and deceived the world." *– President George W. Bush, Remarks in Denver, Colorado, September 27, 2002*

- "We know [Saddam's] got chemical weapons, probably has biological weapons." – *President George W. Bush, Remarks in Portsmouth, New Hampshire, November 1, 2002*

- "Well, we know that Saddam Hussein has chemical and biological weapons. And we know he has an active program for the development of nuclear weapons." – *Secretary of Defense Donald Rumsfeld, CBS Radio, November 14, 2002*

- "In short, we 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 inspectors." *– President George W. Bush, Report on Matters Relevant to the Authorization for Use of Military Force Against Iraq Resolution of 2002, January 20, 2003*

- "So far, however, there are no signs that the regime has taken the decision to make a strategic shift in its approach and to give up its WMD. Indeed, there are many troubling and serious signs that it has no intention to disarm at all." – *President Bush, Report on Matters Relevant to the Authorization for Use of Military Force Against Iraq Resolution of 2003, January 20, 2003*

- "Even more serious is Iraq's response to UNSCR 1441's requirement that Iraq make a "currently accurate, full and complete" declaration of its weapons of mass destruction activities. Iraq's declaration was incomplete and inaccurate." *– President George W. Bush, Report on Matters Relevant to the Authorization for Use of Military Force Against Iraq Resolution of 2002, January 20, 2003*

- "[Saddam Hussein] has been told to disarm for eleven long years. He's not disarming." *– President George W. Bush, remarks with economists, January 21, 2003*

- "[Saddam Hussein] has weapons of mass destruction, the world's deadliest weapons, which pose a direct threat to the United States, our citizens and our friends and allies." – *President George W. Bush, Remarks with Economists, January 21, 2003*

- "The Iraqi regime has actively and secretly attempted to obtain equipment needed to produce chemical, biological and nuclear weapons." *– President George Bush, Press Conference, February 6, 2003*

- "In this case, we're dealing with a country, a regime that has chemical weapons, biological weapons and a nuclear program, and has used chemical weapons against its neighbors and its own people." – *Secretary of Defense Donald Rumsfeld, Press Conference, February 7, 2003*

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- "So has the strategic decision been made to disarm Iraq of its weapons of mass destruction by the leadership of Baghdad? I think our judgment has to be clearly not." – *Secretary of State Colin Powell, United Nations Security Council, March 7, 2003*

- "But we also have to address the question of where might these terrorists acquire weapons of mass destruction, chemical weapons, biological weapons, nuclear weapons? And Saddam Hussein becomes a prime suspect in that regard because of his past track record and because we know he has, in fact, developed these kinds of capabilities, chemical and biological weapons. We know he's used chemical weapons. We know he's reconstituted these programs since the Gulf War. We know he's out trying once again to produce nuclear weapons and we know that he has a long-standing relationship with various terrorist groups, including the al-Qaeda organization." – *Vice President Dick Cheney, Meet the Press, March 16, 2003*

- "Intelligence gathered by this and other governments leaves no doubt that the Iraq regime continues to possess and conceal some of the most lethal weapons ever devised." – *President George W. Bush, Address to the Nation, March 17, 2003*

- "The Iraqi regime has violated all of those obligations. It possesses and produces chemical and biological weapons. It is seeking nuclear weapons." – *President Bush, Report in Connection w/ Presidential Determination under PL 107-244, March 19, 2003*

(U) The above statements are all consistent with the five policy speeches analyzed. The statements below differ in significant ways, either by making different assertions or addressing different topics.

- "They now have massive tunneling systems...They've got all kinds of things that have happened in the period when the inspectors have been out. So the problem is greater today. And the regime that exists today in the U.N. is one that has far fewer teeth than the one you are describing." - *Secretary of Defense Donald Rumsfeld, Testimony before the House Armed Services Committee, September 18, 2002*

- "Even the most intrusive inspection regime would have difficulty getting at all of [Saddam Hussein's] weapons of mass destruction. Many of his WMD capabilities are mobile; they can be hidden from inspectors no matter how intrusive. He has vast underground networks and facilities and sophisticated denial and deception techniques." - *Secretary of Defense Donald Rumsfeld, Testimony before the House Armed Services Committee, September 18, 2002*

- "[W]e simply do not know where all or even a large portion of Iraq's WMD facilities are. We do know where a fraction of them are...[O]f the facilities we do know, not all are vulnerable to attack from the air. A good many are underground and deeply buried. Others are purposely located near population centers – schools, hospitals, mosques – where an airstrike could kill a large number of innocent people. The Iraq problem cannot be solved by air strikes alone." - *Secretary of Defense Donald Rumsfeld, Testimony before Senate Armed Services Committee, September 19, 2002*

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- "Iraqi operatives continue to hide biological and chemical agents to avoid detection by inspectors. In some cases, these materials have been moved to different locations every 12 to 24 hours, or placed in vehicles that are in residential neighborhoods." – *President George W. Bush, National Press Conference, March 6, 2003*

- "He claims to have no chemical or biological weapons, yet we know he continues to hide biological and chemical weapons, moving them to different locations as often as 12 to 24 hours, and placing them in residential neighborhoods." – *Secretary of Defense Donald Rumsfeld, Press Conference, March 11, 2003*

(U) In testimony before Congress on September 18 and 19, 2002, the Secretary of Defense stated that the Iraqi regime had developed extensive underground facilities and elaborate deception techniques to conceal WMD programs.[99]

(U) Throughout the late 1990s and early 2000s, intelligence agencies consistently assessed that the Iraqi regime engaged in aggressive denial and deception tactics, particularly with regard to weapons programs.[100]

[redacted] The Iraqi regime was known to have constructed underground facilities for a variety of purposes, but the intelligence community was not aware of any large, deeply-buried facilities. US intelligence analysts suspected that the regime might be using underground facilities to conceal weapons activities, and there was some unconfirmed reporting that suggested this, but no intelligence agency claimed to know the location of any active underground WMD facilities, and none expressed certainty that such facilities existed. The Defense Intelligence Agency assessed in 2001 that "elements of the regime's weapons of mass destruction (WMD) and ballistic missile programs probably are located in underground facilities", but noted that "neither [redacted] nor intelligence sources have confirmed any WMD- or ballistic missile related underground facilities." An August 2002 DIA report noted that "Iraq has reportedly rebuilt its full offensive BW program in well-concealed, underground, mobile or difficult-to-locate facilities" but went on to state that "no biological weapons (BW)-related underground facilities are currently confirmed to be in use in Iraq".[101]

(U) In November 2002, the National Intelligence Council prepared an assessment on underground facilities in response to a request from the Secretary of Defense. This report stated that Iraq had an extensive network of underground facilities "consisting primarily of earth-bunkered aboveground structures, basement bunkers, and shallow-buried facilities." It went on

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[99] Department of Defense Transcript, *Testimony as Delivered before the House Armed Services Committee regarding Iraq,* September 18, 2002; Department of Defense Transcript, *Testimony as Delivered by Secretary of Defense Donald Rumsfeld before the Senate Armed Services Committee regarding Iraq,* September 19, 2002.
[100] [redacted]; DIA, *Iraq: Iraqi Denial and Deception: Countertargeting Methods,* February 28, 1998; CIA, *Iraq: Status of the Nuclear Program,* January 11, 2002; DIA, *Iraq: Nuclear Program Handbook,* May 2002.
[101] DIA, *Iraq: Chemical Warfare Program Handbook,* December 14, 2001; DIA, *Iraq: Biological Warfare Program Handbook,* August 2002. Both of these assessments noted that Iraq had stored some biological and chemical munitions underground during the Gulf War.

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to say that "We assess that Iraq has some large, deeply buried UGFs, but, because of the Iraqi denial and deception (D&D) program, we have not been able to locate any of these...All the military and regime-associated UGFs [underground facilities] we have identified thus far are vulnerable to conventional, precision-guided, penetrating munitions because they are not deeply buried".[102]

- "Iraq must be disarmed of all nuclear, chemical, and biological weapons, weapons production capabilities, and the means to deliver these weapons. This will be a complex, dangerous, and expensive task -- one for which detailed planning is underway. Third, we must also eliminate Iraq's terrorist infrastructure." *– Mr. Stephan Hadley, Remarks before the Council on Foreign Relations, February 12, 2003*

(U) In a speech in February 2003, the Deputy National Security Advisor stated that Iraq needed to be disarmed of all nuclear, chemical and biological weapons, production capabilities and delivery systems. The October 2002 NIE assessed that Iraq possessed chemical and biological weapons, but the intelligence community did not assess that Iraq had nuclear weapons.[103]

[redacted] The assertion in the final two statements about movement of materials matched a February 2003 CIA assessment, reporting a "mid-ranking Iraqi security officer involved in the surveillance of United Nations Monitoring, Verification, and Inspection Commission (UNMOVIC) activities in Iraq" who said Iraqi authorities had "decided that prohibited materials would never remain in any one location for more than 12 hours or 24 hours at the most and only under specific circumstances."[104] [redacted][105] A second report sourced to an "Iraqi Security Official" said that Iraq's WMD "had begun being moved to new locations every 12 hours."[106]

**Conclusions**

**(U) Conclusion 5: Statements by the President, Vice President, Secretary of State and Secretary of Defense regarding Iraq's possession of weapons of mass destruction were generally substantiated by intelligence information, though many statements made**

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[102] National Intelligence Council, *Implications of Iraqi Underground Facilities for US National Security,* November 2002.
[103] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction,* October 2002.
[104] CIA assessment, DO Memorandum Intelligence Report, [redacted] February 12, 2003.
[105] CIA DO Memorandum Intelligence Report, [redacted] February 12, 2003.
[106] CIA DO Memorandum Intelligence Report, [redacted] March 3, 2003.

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**regarding ongoing production prior to late 2002 reflected a higher level of certainty than the intelligence judgments themselves.**
Many senior policymaker statements in early and mid-2002 claimed that there was no doubt that the Iraqi government possessed or was producing weapons of mass destruction. While the intelligence community assessed at this time that the Iraqi regime possessed some chemical and biological munitions, most reports produced prior to fall 2002 cited intelligence gaps regarding production and expressed room for doubt about whether production was ongoing. Prior to late 2002, the intelligence community did not collectively assess with any certainty that Iraq was actively producing any weapons of mass destruction.

**(U) Conclusion 6: The Secretary of Defense's statement that the Iraqi government operated underground WMD facilities that were not vulnerable to conventional airstrikes because they were underground and deeply buried was not substantiated by available intelligence information.**
While many intelligence analysts suspected that the Iraqi government might be using underground facilities to conceal WMD activities, no active underground WMD facilities had been positively identified. Furthermore, none of the underground government facilities that had been identified were buried deeply enough to be safe from conventional airstrikes.

**Postwar Findings**

(U) Postwar findings regarding weapons of mass destruction can be found in the nuclear, biological, and chemical sections of this report.

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**VI. Delivery**

- "Iraq also possesses a force of Scud-type missiles with ranges beyond the 150 kilometers permitted by the U.N. Work at testing and production facilities shows that Iraq is building more long-range missiles that it can [sic] inflict mass death throughout the region." *- President George W. Bush, Address to the United Nations General Assembly, September 12, 2002*

- "Iraq possesses ballistic missiles with a likely range of hundreds of miles...We've also discovered through intelligence that Iraq has a growing fleet of manned and unmanned aerial vehicles that could be used to disperse chemical or biological weapons across broad areas. We're concerned that Iraq is exploring ways of using these UAVs for missions targeting the United States." *- President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "For example, Iraq had a program to modify aerial fuel tanks for Mirage jets." *- Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "In 1995, an Iraqi military officer, Mujahid Saleh Abdul Latif, told inspectors that Iraq intended the spray tanks to be mounted onto a MiG-21 that had been converted into an unmanned aerial vehicle, or UAV. UAVs outfitted with spray tanks constitute an ideal method for launching a terrorist attack using biological weapons." *- Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "While inspectors destroyed most of the prohibited ballistic missiles, numerous intelligence reports over the past decade from sources inside Iraq indicate that Saddam Hussein retains a covert force of up to a few dozen Scud-variant ballistic missiles. These are missiles with a range of 650 to 900 kilometers." *- Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "What I want you to know today is that Iraq has programs that are intended to produce ballistic missiles that fly 1,000 kilometers. One program is pursuing a liquid fuel missile that would be able to fly more than 1,200 kilometers." *- Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "Iraq has been working on a variety of UAVs for over a decade." *- Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "There is ample evidence that Iraq has dedicated much effort to developing and testing spray devices that could be adapted for UAVs." *- Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "According to Iraq's December 7th declaration, its UAVs have a range of only 80 kilometers. But we detected one of Iraq's newest UAVs in a test flight that went 500

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kilometers nonstop on autopilot in the racetrack pattern depicted here." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "Iraq could use these small UAVs which have a wingspan of only a few meters to deliver biological agents to its neighbors, or if transported, to other countries, including the United States." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

(U) In major policy speeches the President and the Secretary of State described Iraq as possessing and developing advanced weapon systems, particularly unmanned aerial vehicles and longer-range ballistic missiles. Both the President and the Secretary of State suggested that these weapon systems could be used for long-range biological or chemical attacks.

***President's Speech to the UN General Assembly (September 12, 2002)***

(U) In the President's address to the United Nations General Assembly, he stated that "Iraq also possesses a force of Scud-type missiles with ranges beyond the 150 kilometers permitted by the U.N. Work at testing and production facilities shows that Iraq is building more long-range missiles that it can [sic] inflict mass death throughout the region."[107] This statement included two separate assertions: that Iraq possessed missiles with greater-than-permitted range, and that Iraq was building more long-range missiles and increasing the size of its missile force. This statement also implied that these missiles could be used to deliver weapons of mass destruction, but this was not specifically stated.

(U) Iraq's ballistic missile force, as viewed by US intelligence analysts in 2002, can be broken into three fairly distinct categories: 1) older Scud-type missiles with ranges of 625-900 km, remaining from its pre-Gulf War missile force, 2) newer Al-Samoud and Ababil-100 missiles with estimated ranges of 150-300 km, and 3) future medium-range missiles with ranges of 750-3000 km (which were assessed in 2002 to still be in the development stage). The maximum range permitted by UN sanctions was 150 km.

(U) The CIA and DIA both assessed that Iraq was in the process of deploying the Al-Samoud and Ababil-100 short-range missiles. Estimates of these missiles' range varied between 150 and 300 km.[108]

(U) At this time the intelligence community also assessed that Iraq possessed a small number of pre-Gulf War Scud-variant short-range ballistic missiles. Estimates varied as to the size of this force, but a May 2002 assessment from State INR stated that "the highest estimates are on the order of 25-30 missiles."[109] In March 2002 the DIA assessed that this force "probably" included

[107] White House Transcript, *President's Remarks at the United Nations General Assembly*, September 12, 2002.
[108] CIA, *Iraq: Al Samoud Program Advancing Toward Deployment*, February 13, 2001; DIA, *Proliferation of Ballistic Missiles*, January 9, 2002; DIA, *Iraq Missile Proliferation Activity* (TS-91, 650-02) March 1, 2002; CIA, *Expanding WMD Capabilities Pose Growing Threat*, August 1, 2002.
[109] State/INR, *Iraq: WMD and Ballistic Missile Programs*, May 8, 2002.

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the Al Hussein, with an estimated range of 630 km, and "possibly" the Al Abbas, with an estimated range of 900 km.[110]

(U) The intelligence community also assessed that Iraq was working to develop new ballistic missiles with a range of 750-3000 km, which would be greater than its presumed "Scud-type force", but available intelligence indicated that Iraq was still at the early stages of development on this project.[111]

*President's Speech in Cincinnati (October 7, 2002)*

(U) In the President's speech on Iraq in Cincinnati, he stated that "Iraq possesses ballistic missiles with a likely range of hundreds of miles…We've also discovered through intelligence that Iraq has a growing fleet of manned and unmanned aerial vehicles that could be used to disperse chemical or biological weapons across broad areas. We're concerned that Iraq is exploring ways of using these UAVs for missions targeting the United States."[112]

(U) As noted above, the IC assessed at that time that Iraq had a small force of pre-Gulf War Scud-variant missiles, with a likely range of 630-900 kilometers, or roughly 400-560 miles. The IC also assessed that Iraq was in the final stages of development of new short-range ballistic missiles, but estimated that the range of these missiles was 150-300 km, or under 200 miles. These judgments were contained in several assessments, including the October 1, 2002 NIE.[113]

(U) The October 2002 NIE stated that Iraq was developing and flight-testing small-to-medium sized UAVs, and had a UAV development program that was "probably intended to deliver biological warfare agent". The majority of the IC also believed that at least one of these UAVs was close to being ready for operational use. The intelligence branch of the US Air Force disagreed with this part of the analysis of the UAV program, however. Air Force intelligence noted in the NIE that "CBW[chemical and biological weapons] delivery is an inherent capability" of UAVs, but judged that "the small size of Iraq's new UAV strongly suggests a primary role of reconnaissance."[114]

[110] National Intelligence Estimate, *Foreign Missile Developments and the Ballistic Missile Threat Through 2015*, December 2001; DIA, *Iraq Missile Proliferation Activity*, March 1, 2002; CIA, *Iraq: Expanding WMD Capabilities Pose Growing Threat*, August 2002; Prepared Statement of Director of Central Intelligence George Tenet Before the Senate Armed Services Committee and the Senate Select Committee on Intelligence, September 17, 2002; DIA, *Military Threats to Israel*, December 2002.

[111] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002.

[112] White House Transcript, *President Bush Outlines Iraqi Threat*, October 7, 2002.

[113] National Intelligence Estimate, *Foreign Missile Developments and the Ballistic Missile Threat Through 2015*, December 2001; DIA, *Iraq Missile Proliferation Activity*, March 1, 2002; CIA, *Iraq: Expanding WMD Capabilities Pose Growing Threat*, August 2002; Prepared Statement of Director of Central Intelligence George Tenet Before the Senate Armed Services Committee and the Senate Select Committee on Intelligence, September 17, 2002; DIA, *Military Threats to Israel*, December 2002; and National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002. Committee staff were also permitted to view a one-page summary of the NIE, which was prepared for the President. This one-page summary included two sentences on delivery systems, which stated "Baghdad has some SRBMs that exceed UN range limits of 150 km. It has UAVs, probably for delivery of biological weapons and less likely for chemical weapons agents."

[114] Ibid.

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(U) The NIE also described an older UAV program that used larger aircraft. Analysts assessed that this program involved "as many as ten L-29 1960s vintage Czech-built trainers" which had been converted into UAVs as of 2000, and noted that these planes' operational status was unknown. The NIE noted that the US Air Force assessed that "no flyable L-29 airframes remain", and included a footnote pointing out that "the Military Intelligence Community assesses that the role of the L-29 UAV-modified aircraft is largely historical and that concentrating on it distracts from other more viable delivery mechanisms for CBW".[115]

(U) The NIE went on to state that Iraq had "at least one small UAV that could be employed covertly against the continental United States", and that this UAV "might be available for operational use within months". The NIE also described an incident in which an Iraqi procurement network "attempted to procure commercially available route planning software and an associated topographic database that [would] provide coverage of the '50 states'". The NIE concluded that this information suggested that "Iraq is investigating the use of these UAVs for missions targeting the United States".[116]

(U) Intelligence assessments regarding UAVs shifted after the October 2002 NIE. A subsequent NIE, *Nontraditional Threats to the US Homeland Through 2007*, published in January 2003, did not describe Iraq's UAV program as "probably intended" for biological weapons delivery, and instead stated that "Iraq may be modifying UAVs" for CBW delivery. This NIE also noted that Iraqi UAVs could reach the United States, if they were transported (in some unspecified manner) "to within a few hundred kilometers."[117]

(U) The January 2003 NIE also discussed Iraqi attempts to procure mapping software, but stated only that this software "could support programming of a UAV autopilot for operation in the United States."[118]

(U) The Air Force continued to dissent from even these less conclusive judgments. Joined by the DIA and the Army intelligence branch, the Air Force stated that, while most UAVs were capable of being used to deliver biological weapons, evidence that Iraqis were modifying UAVs for this purpose was "unconfirmed, and is not sufficiently compelling to indicate that the Iraqis have done so." These services further noted that they believed that "the purpose of the Iraqi request for route planning software and topographic database was to acquire a generic mapping capability – a goal that is not necessarily indicative of an intent to target the U.S. Homeland."[119]

(U) The President did not mention Iraqi missiles or UAVs in the 2003 State of the Union Address.[120]

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[115] Ibid.
[116] Ibid.
[117] National Intelligence Estimate, *Nontraditional Threats to the US Homeland*, January 2003.
[118] Ibid.
[119] Ibid.
[120] White House Transcript, *President Delivers "State of the Union"*, January 28, 2003.

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***Secretary of State's Address to the UN Security Council (February 5, 2003)***

(U) The Secretary of State made several mentions of prohibited missiles and UAV capabilities in his February 2003 address to the UN Security Council. He asserted that "Iraq had a program to modify aerial fuel tanks for Mirage jets", and that "In 1995, an Iraqi military officer, Mujahid Saleh Abdul Latif, told inspectors that Iraq intended the spray tanks to be mounted onto a MiG-21 that had been converted into an unmanned aerial vehicle, or UAV. UAVs outfitted with spray tanks constitute an ideal method for launching a terrorist attack using biological weapons."[121]

(U) Both of these statements were substantiated by intelligence assessments, however both referred to pre-Gulf War programs.[122]

[redacted] The Secretary made two central assertions regarding prohibited missiles, first stating that "numerous intelligence reports over the past decade from sources inside Iraq indicate that Saddam Hussein retains a covert force of up to a few dozen Scud-variant ballistic missiles. These are missiles with a range of 650 to 900 kilometers."[123] This assertion was included in the earlier NIE and a number of other intelligence reports. However, the NIE did not report any direct evidence of this Scud-variant force and stated that this assessment was based [redacted][124]

(U) His other key assertion regarding missiles was that "Iraq has programs that are intended to produce ballistic missiles that fly 1,000 kilometers. One program is pursuing a liquid fuel missile that would be able to fly more than 1,200 kilometers."[125] These programs were also referenced in the earlier NIE, which noted that they were in an earlier stage of development than shorter-range missile programs.[126]

(U) Regarding UAVs, the Secretary made four major statements, including "Iraq has been working on a variety of UAVs for over a decade."[127] Intelligence assessments had indicated the existence of the pre-Gulf War MiG UAV program, as well as the L-29 program mentioned in the NIE. Reporting on Iraq's smaller UAV program was more recent, and appears to have begun in 2001. The Committee is also aware of intelligence provided directly to the Secretary by the CIA which also substantiated this statement.[128]

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[121] White House Transcript, *U.S. Secretary of State Colin Powell Addresses the U.N. Security Council*, February 5, 2003.
[122] DIA, *Iraq's Nuclear, Biological and Chemical Weapons and Missile Programs: Progress, Prospects, and Potential Vulnerabilities* (DI-156, 9-27-00) May 2000.
[123] White House Transcript, *U.S. Secretary of State Colin Powell Addresses the U.N. Security Council, February 5, 2003.*
[124] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002.
[125] White House Transcript, *U.S. Secretary of State Colin Powell Addresses the U.N. Security Council, February 5, 2003.*
[126] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002.
[127] White House Transcript, *U.S. Secretary of State Colin Powell Addresses the U.N. Security Council, February 5, 2003.*
[128] DIA, *Iraq's Nuclear, Biological and Chemical Weapons and Missile Programs: Progress, Prospects, and Potential Vulnerabilities* (DI-156, 9-27-00) May 2000; National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002; Senior Executive Intelligence Brief, *Iraq: Shopping for UAV Equipment*, September 14, 2001.

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(U) The Secretary went on to say that "we detected one of Iraq's newest UAVs in a test flight that went 500 kilometers nonstop on autopilot in the racetrack pattern depicted here."[129] The January 2003 NIE described this flight data, and stated that the UAVs autonomous flight range was at least 500 kilometers.[130]

(U) The Secretary drew a connection between the apparent UAV program and biological weapons, stating that "There is ample evidence that Iraq has dedicated much effort to developing and testing spray devices that could be adapted for UAVs." Finally, he argued that "Iraq could use these small UAVs, which have a wingspan of only a few meters, to deliver biological agents to its neighbors, or if transported, to other countries, including the United States."[131]

(U) Iraq's pre-Gulf War program to fit Mirage jets with aerosol spray tanks was mentioned in numerous intelligence assessments, as well as Iraqi declarations to the UN.[132] As noted above, the January 2003 NIE said that Iraq "may be modifying UAVs to deliver CBW agents, according to numerous sources." The Air Force/Army/DIA dissent to this NIE agreed that biological weapons delivery is an inherent capability of most UAVs," but concluded that "a reconnaissance mission for the UAV program is more likely."[133]

(U) The January 2003 NIE stated that "UAVs could strike the homeland if transported to within a few hundred kilometers." It noted that "Iraq has at least one small UAV" with a range of "at least 500 km," or roughly 300 miles.[134]

**Additional Statements**

- "And let there be no doubt about it, his regime has dozens of ballistic missiles and is working to extend their range in violation of U.N. restriction." - *Secretary of Defense Donald Rumsfeld, Testimony before the House Armed Services Committee, September 18, 2002*

- "His regime is pursuing pilotless aircraft as a means of delivering chemical and biological weapons." - *Secretary of Defense Donald Rumsfeld, Testimony before the House Armed Services Committee, September 18, 2002*

[129] White House Transcript, *U.S. Secretary of State Colin Powell Addresses the U.N. Security Council, February 5, 2003.*
[130] National Intelligence Estimate, *Nontraditional Threats to the US Homeland*, January 2003.
[131] White House Transcript, *U.S. Secretary of State Colin Powell Addresses the U.N. Security Council, February 5, 2003.*
[132] CIA, Iraq: Iraq's Biological Warfare Program: Well Positioned for the Future, April 14, 1997; CIA, Iraq's L-29: A Biological and Chemical Warfare Challenge to US Forces, July 12, 2001; DIA, Iraq's Weapons of Mass Destruction and Theater Ballistic Missile Programs: Post September 11th, January 1, 2002; DIA, Iraq: Biological Warfare Program Handbook, August 2002; National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002.
[133] National Intelligence Estimate, *Nontraditional Threats to the US Homeland*, January 2003.
[134] Ibid.

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- "The Iraqi regime has acquired and tested the means to deliver weapons of mass destruction. All the world has now seen the footage of an Iraqi Mirage aircraft with a fuel tank modified to spray biological agents over wide areas. Iraq has developed spray devices that could be used on unmanned aerial vehicles with ranges far beyond what is permitted by the Security Council. A UAV launched from a vessel off the American coast could reach hundreds of miles inland." – *President George W. Bush, Statement in the Roosevelt Room, February 6, 2003*

(U) The above statements are all consistent with the five major policy speeches analyzed. The statement below differs from these speeches.

- The Iraqi regime possesses biological and chemical weapons, is rebuilding the facilities to make more, and according to the British government, [Iraq] could launch a biological or chemical attack in as little as forty-five minutes after the order is given." – *President George W. Bush, Radio Address, September 28, 2002*

[redacted] On September 28, 2002, the President cited the British government as the source of a statement that the Iraqi government was capable of launching chemical or biological attacks with forty-five minutes of warning. A report from [redacted] that same month had cited an intelligence source who said that the Iraqi government possessed chemical and biological munitions that could be deployed (apparently against neighboring countries) with a forty-five minute response time.

**Conclusions**

**(U) Conclusion 7: Statements in the major speeches and additional statements analyzed regarding Iraqi ballistic missiles were generally substantiated by available intelligence.** The intelligence community was consistent in its judgments that the Iraqi military possessed a small number of Scud-type missiles left over from the Gulf War era (although the October 2002 NIE noted that these judgments were based on accounting gaps rather than direct evidence), and that Iraq was developing short-range missiles whose range exceeded the range permitted under UN sanctions by as much as 150 km, or 93 miles. The community also judged that Iraq was pursuing the capability to build longer-range missiles, but assessed that this project was still at the early stages of development.

**(U) Conclusion 8: Statements by the President, Secretary of Defense and Secretary of State that Iraq was developing unmanned aerial vehicles (UAVs) that could be used to deliver chemical or biological weapons were generally substantiated by intelligence information, but did not convey the substantial disagreements or evolving views that existed in the intelligence community.**
The majority view of the October 2002 National Intelligence Estimate judged that Iraq had a UAV program that was intended to deliver biological warfare agents. Air Force intelligence dissented from this view, and argued that the new UAV was probably being developed for reconnaissance. The majority view of the January 2003 NIE said that Iraq "may" be modifying UAVs for chemical or biological weapons, and the Air Force, Army and Defense Intelligence

[redacted]

Agency argued that the evidence for this was "not sufficiently compelling to indicate that the Iraqis have done so."

**(U) Conclusion 9: The President's suggestion that the Iraqi government was considering using UAVs to attack the United States was substantiated by intelligence judgments available at the time, but these judgments were revised a few months later, in January 2003.**

The October 2002 National Intelligence Estimate noted that an Iraqi procurement network had attempted to purchase commercial mapping software that included data on the United States, and said that this suggested that the Iraqi government was considering using UAVs to target the US. The January 2003 NIE revised this claim, and said only that the software *could* be used for this purpose. The Air Force, Army and Defense Intelligence Agency dissented from this judgment as well, and argued that the purpose of the Iraqi request was to acquire a generic mapping capability.

**Postwar Findings**

(U) Postwar findings confirm that Iraq was developing the Al-Samoud and Al-Fat'h (formerly Ababil-100) missiles, and that both had ranges that exceeded 150 km. In early February 2003 the intelligence community revised it's assessment of the al-Samoud's maximum range down from 300 km to 170 km, which was consistent with postwar findings.[135] In late February 2003 Saddam agreed to UN demands that his Al-Samoud inventory be destroyed. Postwar findings indicate that the Iraqi government unilaterally destroyed its remaining Scud-type ballistic missiles in 1991.

(U) Postwar findings confirmed that Iraq's UAV development program was primarily intended for reconnaissance. Postwar investigations did not find any evidence that Iraq had conducted any research to develop a chemical or biological weapons capability for its developmental UAV program, or that Iraq had intended to use its UAVs for missions targeting the United States.[136]

[135] National Intelligence Estimate, *Foreign Missile Developments and the Ballistic Missile Threat Through 2015*, February 2003.
[136] *Report on Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare With Prewar Assessments*, Senate Select Committee on Intelligence, Senate Report 109-331, September 8, 2006.

[redacted]

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**VII. Links to Terrorism**

- "Iraq continues to shelter and support terrorist organizations that direct violence against Iran, Israel, and Western governments. Iraqi dissidents abroad are targeted for murder. In 1993, Iraq attempted to assassinate the Emir of Kuwait and a former American President. Iraq's government openly praised the attacks of September the 11th. And al Qaeda terrorists escaped from Afghanistan and are known to be in Iraq." - *President George W. Bush, Address to the United Nations General Assembly, September 12, 2002*

- "[The Iraqi regime] has given shelter and support to terrorism, and practices terror against its own people. The entire world has witnessed Iraq's eleven-year history of defiance, deception and bad faith." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "Over the years, Iraq has provided safe haven to terrorists such as Abu Nidal, whose terror organization carried out more than 90 terrorist attacks in 20 countries that killed or injured nearly 900 people, including 12 Americans. Iraq has also provided safe haven to Abu Abbas, who was responsible for seizing the Achille Lauro and killing an American passenger. And we know that Iraq is continuing to finance terror and gives assistance to groups that use terrorism to undermine Middle East peace." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "We know that Iraq and al Qaeda have had high-level contacts that go back a decade. Some al Qaeda leaders who fled Afghanistan went to Iraq. These include one very senior al Qaeda leader who received medical treatment in Baghdad this year, and who has been associated with planning for chemical and biological attacks. We've learned that Iraq has trained al Qaeda members in bomb-making and poisons and deadly gases." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "Saddam Hussein is harboring terrorists and the instruments of terror, the instruments of mass death and destruction. And he cannot be trusted. The risk is simply too great that he will use them, or provide them to a terror network. " - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "Evidence from intelligence sources, secret communications, and statements by people now in custody reveal that Saddam Hussein aids and protects terrorists, including members of al Qaeda. Secretly, and without fingerprints, he could provide one of his hidden weapons to terrorists, or help them develop their own." – *President George W. Bush, State of the Union Address, January 28, 2003*

- "But what I want to bring to your attention today is the potentially much more sinister nexus between Iraq and the al-Qaida terrorist network, a nexus that combines classic terrorist organizations and modern methods of murder. Iraq today harbors a deadly terrorist network headed by Abu Musab al-Zarqawi an associate and collaborator of Usama bin Laden and his al-Qaida lieutenants." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

[redacted]

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- "Those helping to run this camp are Zarqawi lieutenants operating in northern Kurdish areas outside Saddam Hussein's controlled Iraq. But Baghdad has an agent in the most senior levels of the radical organization Ansar al-Islam that controls this corner of Iraq. In 2000, this agent offered al-Qaida safe haven in the region." *- Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "After we swept al-Qaida from Afghanistan, some of those members accepted this safe haven. They remain there today." *- Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "Zarqawi's activities are not confined to this small corner of northeast Iraq. He traveled to Baghdad in May of 2002 for medical treatment, staying in the capital of Iraq for two months while he recuperated to fight another day. During his stay, nearly two dozen extremists converged on Baghdad and established a base of operations there. These al-Qaida affiliates in Baghdad now coordinate the movement of people, money, and supplies into and throughout Iraq for his network, and they have now been operating freely in the capital for more than eight months." *- Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "Last year, two suspected al-Qaida operatives were arrested crossing from Iraq into Saudi Arabia. They were linked to associates of the Baghdad cell and one of them received training in Afghanistan on how to use cyanide." *- Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "We are not surprised that Iraq is harboring Zarqawi and his subordinates. This understanding builds on decades-long experience with respect to ties between Iraq and al-Qaida. Going back to the early and mid-1990s when bin Laden was based in Sudan, an al-Qaida source tells us that Saddam and bin Laden reached an understanding that al-Qaida would no longer support activities against Baghdad. Early al-Qaida ties were forged by secret high-level intelligence service contacts with al-Qaida, secret Iraqi intelligence high-level contacts with al-Qaida." *- Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "We know members of both organizations met repeatedly and have met at least eight times at very senior levels since the early 1990s. In 1996, a foreign security service tells us that bin Laden met with a senior Iraqi intelligence official in Khartoum and later met the director of the Iraqi intelligence service." *- Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "Iraqis continue to visit bin Laden in his new home in Afghanistan. A senior defector, one of Saddam's former intelligence chiefs in Europe, says Saddam sent his agents to Afghanistan sometime in the mid-1990s to provide training to al-Qaida members on document forgery." *- Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

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- "The support that this detainee describes included Iraq offering chemical or biological weapons training for two al-Qaida associates beginning in December 2000." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

(U) The Committee addressed the pre-war intelligence linking Iraq and terrorist organizations in its first Iraq report, *U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, in July 2004. The Committee reviewed the accuracy of the prewar intelligence in its report, *Postwar Findings about Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments*, in September 2006.

(U) **Scope Note:** This section addresses statements that referenced past or present Iraqi links to terrorism. Statements regarding possible future links or cooperation between the Iraqi regime and terrorism are discussed in the Intent section.

***Vice President's Speech in Tennessee (August 26, 2002)***

(U) The Vice President made no reference to links between Iraq and al-Qa'ida or any other terrorist group in his August 2002 speech.

***President's Speech to the UN General Assembly (September 12, 2002)***

(U) In this speech, the President stated that "Iraq continues to shelter and support terrorist organizations" in violation of UN Security Council Resolution 1372, and that "al Qaeda terrorists escaped from Afghanistan and are known to be in Iraq."

(U) The intelligence community believed that Iraq had long supported, through safeharbor, financial support, and training various regional terrorist organizations such as Abu Nidal and Palestinian groups. For example, Director Tenet testified before the Committee on February 6, 2002 that, "Iraq provides safe haven, financial support, and low-level training to a number of terrorist groups—including the Palestine Liberation Front, the Abu Nidal Organization, and the Mojaheddin-e Khalq." [137]

(U) The February 2002 National Intelligence Estimate (NIE), *International Terrorist Threats to US Interests*, included a section on Iraq under the heading of state sponsors of terrorism. The NIE stated that "Saddam will continue contacts with several terrorist groups and will weigh carefully the risks and possible benefits of supporting their operations." It continued that "As Iraq strengthens ties to other countries and sends its intelligence officers abroad, under official or commercial cover, its ability to conduct or sponsor terrorism will increase."

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[137] See also CIA, SEM, *The Terrorist Threat from Iraq*, December 15, 2001, "Baghdad continues to provide safehaven, financial support, and low-level terrorist training to a number of terrorist groups. ... Iraq continues to support to varying degrees the Palestine Liberation Front (PLF), the Mojahedin-e Khalq (MEK), the Kurdistan Workers' Party (PKK), Abu Ibrahim of the 15 May Organization, the Arab Liberation Front, and the Abu Nidal Organization, which appears to be rebuilding with help from Iraq."

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[redacted] A CIA report in June 2002 discussed al Qaeda operatives moving from Afghanistan to Iraq, saying "[redacted] reporting show that unknown numbers of al-Qa'ida associates fleeing Afghanistan since December have used Iraq—including the Kurdish areas of northern Iraq, Baghdad, and other regions—as a safehaven and transit area." The paper continued, "We lack positive indications that Baghdad is complicit in this activity, but the persistence of an al-Qa'ida presence and the operatives' silence about any harassment from Iraqi authorities, who closely monitor the population, may indicate Baghdad is acquiescent or finds their presence useful."[138]

[redacted] A June 24, 2002 CIA "Senior, Publish When Ready" (SPWR) report, *Iraq: Sizing Up Connections to Al-Qa'ida*, stated that "[redacted] reporting indicate some al-Qa'ida operatives and fighters, including most notably senior al-Qa'ida operative Abu Mus'ab al-Zarqawi, have fled to Baghdad as well as to the Kurdish regions since the Taliban collapsed. [redacted] intelligence gives no indication of Iraqi regime complicity but also reveals no concern about possible arrest or scrutiny by Iraqi security services."[139]

***President's Speech in Cincinnati (October 7, 2002)***

(U) This speech made a number of distinct claims about Iraq and terrorism. The President reiterated his earlier statement about Iraq providing shelter and support to terrorism, specifically citing safe haven for Abu Nidal and Abu Abbas and financing of terrorist groups undermining Middle East peace.

(U) The President stated that "We know that Iraq and al Qaeda have had high-level contacts that go back a decade." He referenced al Qaeda leaders fleeing Afghanistan for Iraq, noting in particular Abu Musab al-Zarqawi as having "received medical treatment in Baghdad." The President added that "We've learned that Iraq has trained al Qaeda members in bomb-making and poisons and deadly gases."

(U) Finally, the President stated that Saddam Hussein was "harboring terrorists and the instruments of terror, the instruments of mass death and destruction." While this statement was not specific to any group, the placement in the speech and the context suggests that the President was stating that Hussein was harboring al Qaeda. The statement appeared two paragraphs after statements that "...Iraq and the al Qaeda terrorist network share a common enemy," that some "al Qaeda leaders who fled Afghanistan went to Iraq," and that "Iraq has trained al Qaeda members in bomb-making and poisons and deadly gases." (These statements are discussed elsewhere in this report.) The President's statement came in the same paragraph as the statement "confronting the threat posed by Iraq is crucial to winning the war on terror."

(U) The President's statement on contacts between Iraq and al Qaeda did not elaborate on the nature of these contacts or whether they reflected a substantive relationship between the two

[138] Central Intelligence Agency, Iraq and al-Qa'ida: Interpreting a Murky Relationship, June 21, 2002, 9. Other reports on al-Qa'ida's presence in Iraq include CIA, SEIB, Sep 10, 2002, Al-Qa'ida Determined to Strike Soon; and May 24, 2002 State Department INR document entitled, Iraq/Terrorism: Al-Qaida Operatives Moving into Baghdad.
[139] CIA SPWR, *Iraq: Sizing Up Connections to Al-Qa'ida*, (SPWR062402-01).

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sides. The intelligence community reported numerous times on interactions between elements in the Iraqi regime and members of al-Qa'ida and, through direct contacts with Saddam Hussein as well as with various high-level Iraq regime officials.

(U) DCI Tenet's statement to the Committee on February 6, 2002 underscored the duration of the contacts but provided additional analysis on the nature of those contacts. He wrote that "Baghdad's connections to al-Qa'ida are tenuous, but they appear to have maintained a mutually wary relationship for nearly a decade. Intelligence reports indicate that Iraq has maintained a liaison relationship with Bin Ladin. At the same time, we assess that their divergent ideologies make it difficult for Baghdad and al-Qa'ida to forge the kind of cooperation that Baghdad has with terrorist groups such as the PLF, ANO, and the MEK."

(U) A CIA paper from June 7, 2002 noted that intelligence reporting "of varying reliability indicates that the Iraqi regime and al-Qa'ida have had mutually wary contacts for the last decade. It is possible that the two have forged ties that could have resulted in cooperation on specific terrorist operations, but the available reporting does not point to such a relationship."[140]

(U) In part of an intelligence summary that dismissed a claim that Saddam and bin Laden met in Iraq in 2000, the DIA assessed that "an alliance between the two individuals is unlikely as Saddam views Bin Ladin's brand of Islam as a threat to his regime and Bin Ladin is opposed to those Muslim states that do not follow his version of Islam."[141] This theme was repeated in a June 24, 2002 CIA paper, which assessed that "interaction between Saddam and Bin Ladin appears to be more akin to activity between rival intelligence services, each trying to use the relationship to its own advantage."[142]

(U) The same report also noted that "contacts between the Iraqi regime and al-Qa'ida appear to reach back over the past 10 years and possibly strengthened around 1998. CIA analysts agree al-Qa'ida gained some tangible benefits from these contacts but do not agree on Saddam's agenda. Some think he is concerned principally with penetrating and monitoring al-Qa'ida, while others see more collusion."[143]

(U) Another CIA report in June 2002 said, "intelligence reporting highlights more than a decade of contacts between the Iraqi Government and al-Qa'ida based on shared anti-US goals and Bin Ladin's interest in unconventional weapons and safehaven."[144] This report was "purposefully aggressive in seeking to draw connections, on the assumption that any indication of a relationship between these two hostile elements could carry great dangers to the United States." Nonetheless, the report assessed that the "pattern of contacts and cooperation ... reflects wariness coupled with recognition of potential mutual benefit. In contrast to the traditional patron-client relationship Iraq enjoys with radical secular Palestinian groups, the ties between

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[140] CIA SPWR dated June 7, 2002 titled, *Possible Meeting Between Bin Ladin and Iraqi Officials in Sudan.*

[141] A February 6, 2002, and a February 7, 2002 DITSUM (No. 031-02 and No. 032-02).

[142] [redacted] A June 24, 2002 SPWR, *Iraq: Sizing Up Connections to Al-Qa'ida* (SPWR062402-01). Later, the report states "[redacted] reporting indicates that Bin Ladin, while in Sudan in 1993, reached an 'understanding' with Saddam under which Bin Ladin's followers would not undertake actions against the Iraqi leader. The report indicated the two also agreed to cooperate, although no details were provided."

[143] Ibid.

[144] CIA, Iraq and al-Qaida: Interpreting a Murky Relationship, June 21, 2002.

[redacted]

Saddam and Bin Ladin appear to be much like those between rival intelligence services, with each side trying to exploit the other for its own benefit."

(U) The intelligence on the contacts between Iraq and al Qaeda appears to have grown by Fall of 2002. A CIA paper from September 13, 2002, stated that "We have identified about 12 meetings between Iraqi officials and senior al-Qa'ida leaders from a review of reporting we assess to have at least some credibility. Ten of these reports mention specific discussions involving top al-Qa'ida operatives."[145]

[redacted] DCI Tenet's September 17, 2002 testimony to the Committee elaborated on these contacts, saying that "there is solid evidence that Iraq and al-Qa'ida have had sporadic contacts over the past decade. Intelligence reports point to various Iraq-al-Qa'ida meetings through high-level and third-party intermediaries. [redacted]

(U) Tenet also described in his testimony "credible reporting of about a dozen direct meetings between senior Iraqi intelligence officials and top al-Qa'ida operatives from the early 1990s to the present." He noted that the intelligence sources on the contacts "do not describe Iraqi complicity in, control over, or authorization of specific terrorist attacks carried out by al-Qa'ida. Taken together, the mass of reporting outlines a relationship in which both sides probably were determining how best to take advantage of the other."[146]

(U) On the topic of Iraqi providing harbor for al Qaeda members, Tenet's September 17, 2002 testimony began by saying that "most of the reporting on this involves Kurdish-inhabited northern Iraq, which Baghdad has not controlled since 1991. Intelligence confirms that al-Qa'ida fighters have relocated to the north, where they are hosted by a local Kurdish extremist group called Ansar al-Islam. The relocations have increased since the U.S. military campaign in Afghanistan began late last year. We estimate there are about 100 to 200 al-Qa'ida members and associates in the area."

[redacted] Tenet added that "an unknown number of al-Qa'ida associates have fled during the past six months to or through other parts of Iraq.... [redacted] intelligence in May 2002 indicated that several militants associated with al-Qa'ida were checking into hotels in Baghdad and were using the Iraqi capital as a base for financial transactions and other activities." Tenet concluded these statements, however, by saying that "we do not know to what extent Baghdad may be actively complicit in this use of its territory for safehaven and transit. The operatives have not mentioned Iraq's security presence, but their conversations often are cryptic, sprinkled with code words, and short on specifics. Given the pervasive presence of Iraq's security apparatus, it would be difficult for al-Qaida to maintain an active, long-term presence in Iraq without alerting the authorities or without at least their acquiescence."

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[145] SPWR dated September 13, 2002 titled, *Terrorism: Contacts Between al-Qa'ida Officials and Iraqi Intelligence Officers.*
[146] September 17, 2002 testimony by DCI Tenet to the Senate Select Committee on Intelligence.

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(U) The President's next statement in the Cincinnati speech was that Abu Musab al-Zarqawi "received medical treatment in Baghdad." Director Tenet's September 17, 2002 testimony noted this point specifically, saying that, "Of particular interest is senior al-Qa'ida planner Abu Mus'ab al-Zarqawi, who was in Baghdad under an assumed identity in late May, possibly seeking medical treatment. We do not know his current location, but his close associates remain active in Baghdad, leaving open the possibility that he could be elsewhere in Iraq." The issue of Zarqawi's medical treatment was also discussed in reports by the State Department Bureau of Intelligence and Research and the DIA.[147]

(U) The President's final terrorism statement in the speech was "[w]e've learned that Iraq has trained al Qaeda members in bomb-making and poisons and deadly gases ." The intelligence community had produced assessments on the topic of bombmaking. The intelligence reports on chemical and biological weapons training came primarily from the interrogation of al Qaeda detainee Ibn al-Shaykh al-Libi.

(U) The September 2002 CIA report *Iraqi Support for Terrorism*, which was coordinated with the DIA, stated that al-Libi said Iraq had "provided" unspecified CBW training for two al-Qa'ida associates in 2000, but also stated that al Libi "did not know the results of the training."[148] In the June 2002 paper, *Iraq and al Qa'ida: Interpreting a Murky Relationship*, the CIA also stated that al-Libi claimed Iraq had "provided" unspecified CBW training for two al-Qa'ida associates in 2000.[149]

(U) Director Tenet testified in September 2002 that, "[t]here is evidence that Iraq provided al-Qa'ida with various kinds of training—combat, bomb-making, and CBRN. Although Saddam did not endorse al-Qa'ida's overall agenda and was suspicious of Islamist movements in general, he was apparently not averse, under certain circumstances, to enhancing Bin Ladin's operational capabilities.

(U) The October 2002 WMD National Intelligence Estimated stated that "Detainee Ibn al-Shaykh al-Libi—who had significant responsibility for training—has told us that Iraq provided unspecified chemical or biological weapons training for two al-Qa'ida members beginning in December 2000."[150]

(U) Months prior to the speech and the latter intelligence products cited above, questions were raised in finished intelligence about al-Libi's credibility. A February 22, 2002 DIA Defense Intelligence Terrorism Summary noted that Ibn al-Shaykh [al-Libi] "lacks specific details on the Iraqi's involvement, the CBRN materials associated with the assistance, and the location where the training occurred. It is possible he does not know any further details; it is more likely this individual is intentionally misleading the debriefers. Ibn al-Shaykh has been undergoing debriefs for several weeks and may be describing scenarios to the debriefers that he knows will retain their interest. Saddam's regime is intensely secular and is wary of Islamic revolutionary

[147] State INR, Iraq/Terrorism: Al-Qaida Operatives Moving into Baghdad, May 24, 2002; DIA, Transnational/Iraq: Senior al-Qaida Operative Reportedly in Iraq, May 28, 2002 DIA.
[148] CIA, *Iraqi Support for Terrorism*, September 2002, p. 12 (SSCI # 2005-5178).
[149] CIA, *Iraq and al-Qa'ida: Interpreting a Murky Relationship*, July 2002, p. 6 (SSCI# 2002-3005).
[150] National Intelligence Estimate, Iraq's Continuing Programs for Weapons of Mass Destruction, October 2002, 68.

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movements. Moreover, Baghdad is unlikely to provide assistance to a group it cannot control."[151]

(U) DIA reiterated some of these points in additional reports. On August 7, 2002, the CIA reported on al-Libi's credibility. The summary of the report stated that "questions persist about [al-Libi's] forthrightness and truthfulness" and later elaborating, "In some instances, however, he seems to have fabricated information. Perhaps in an attempt to exaggerate his own importance, Ibn al-Shaykh claims to be a member of al-Qa'ida's Shura Council, a claim not corroborated by other intelligence reporting"[152]

### *President's State of the Union Address (January 28, 2003)*

(U) President Bush stated that "Saddam Hussein aids and protects terrorists, including members of al Qaeda." He also reiterated the concern that Iraq could secretly provide weapons to terrorists or help them develop their own. The intelligence relating to these claims was described above.

(U) The November 2002 NIE, *Nontraditional Threats to the US Homeland Through 2007* repeated much of the intelligence cited above on the relationship between Iran and al-Qa'ida.[153] The NIE said that "the relationship between the Iraqi regime and al-Qa'ida appears more to be two sides trying to feel one another out or exploit each other." The NIE cited "solid reporting" that "Iraq and al-Qa'ida have had senior-level contacts going back to the rise of Usama Bin Ladin. Intelligence reporting-albeit fragmentary and at times conflicting-indicates a series of contacts over nearly a decade between the Iraqi Government and al-Qa'ida...."[154]

(U) The NIE also stated that "[w]e have credible reporting that al-Qa'ida leaders sought help from Baghdad in acquiring WMD capabilities and that Iraq provided training in bomb-making and, according to one detainee, in the area of chemical and biological agents," and that "[w]e have solid evidence of the presence in Iraq of al-Qa'ida members including some that have been in Baghdad."[155]

### *Secretary of State's Address to the UN Security Council (February 5, 2003)*

(U) Secretary Powell's statements repeated and amplified those previously mentioned. His stated that Iraq "harbors a deadly terrorist network" headed by Zarqawi; that an Iraqi agent "offered al-Qaida safe haven" in the northern Kurdish regions; and that "al-Qaida affiliates in Baghdad now ... have been operating freely in the capital for more than eight months."

[151] DIA DITSUM 044-02 of February 22, 2002.
[152] CIA, *Terrorism: Credibility of Ibn al-Shaykh al-Libi and the Information He Has Provided While in Custody* (SPWR080702-05), August 7, 2002.
[153] This NIE was not published until January 2003.
[154] National Intelligence Estimate, Nontraditional Threats to the US Homeland Through 2007, NIE 2002-15HJ, November 2002, 16-17.
[155] Ibid, 17.

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(U) Secretary Powell referred to "secret Iraqi intelligence high-level contacts with al-Qaida" that resulted in an understanding between Hussein and bin Laden that al-Qa'ida would not to support terrorist activities against Baghdad. Powell cited "at least eight [meetings] at very senior levels since the early 1990s." He cited "a foreign security service as providing information on meetings between bin Laden and an Iraqi intelligence officer in 1996 and the head of the Iraqi intelligence service afterwards. Powell laid out cooperation between Iraq and al-Qa'ida, including Iraq's provision of assistance in document forgery, bombmaking, and chemical and biological weapons training.

(U) Many of these statements are consistent with ones made in speeches previously described. Additional intelligence relating to Secretary Powell's statements is below.

(U) On January 31, 2003, the State Department Undersecretary for INR, Carl Ford, wrote a memo to Secretary Powell laying out the intelligence on Iraq's ties to al Qaeda. He wrote that "Our evidence suggests that Baghdad is strengthening a relationship with al-Qaida that dates back to the mid-1990s, when senior Iraqi Intelligence officers established contact with the network in several countries." Ford added that "we have some evidence that Iraqi Intelligence has been in contact with elements in the northeastern area. And the al-Qaida operatives there are in regular contact with other operatives located in Baghdad. The Iraqi government has also received information from other sources alerting it to the presence of al-Qaida operatives in Baghdad."

(U) Ford wrote that Zarqawi "has had a good relationship with Iraqi intelligence officials" and that "we have hard evidence that al-Qaida is operating in several locations in Iraq with the knowledge and acquiescence of Saddam's regime." Ford wrote that intelligence "revealed the presence of safehouse facilities in the city as well as the clear intent to remain in Baghdad. Also, foreign NGO workers outside of Iraq who we believe provide support to al-Qaida have also expressed their intent to set up shop in Baghdad."

(U) Secretary Powell stated that the Zarqawi network had freedom of movement in Baghdad the ability to command and control terrorist elements throughout Iraq. As discussed previously, several intelligence reports noted Zarqawi's presence in Baghdad, including a September 2002 CIA assessment which said "Although most al-Qa'ida operatives in Iraq are adjacent to the Kurdish safehaven in northern Iraq, an unknown number of individuals have used Baghdad and other regions of the country as bases to orchestrate operations."[156]

[redacted] Director Tenet testified to the Committee on September 17, 2002 that "In January, an al-Qaida associate bragged [redacted] that the situation in Iraq was good, that Baghdad could be transited quickly formally or informally, [redacted]."

(U) A CIA SPWR dated December 21, 2002 titled, *Iraq: Extremists in Baghdad Aid Al-Zarqawi Operations*, relayed that "[Reporting] indicates more than a dozen al-Qa'ida affiliated extremists converged on Baghdad beginning in May and have since been coordinating the movement of people, money, and supplies into Baghdad and northeastern Iraq. Veteran Egyptian Islamic Jihad

[156] CIA, Iraqi Support for Terrorism, September 2002, p. iv.

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(EIJ) operative Yusif al-Dardiri arrived in Baghdad in mid-May-about the time Abu Mus'ab al-Zarqawi went there for medical treatment-and signed a one-year house lease for his associates." The CIA reported again on al-Dardiri in a January 2003 report, Iraqi Support for Terrorism, stating that he was in Baghdad and facilitating Zarqawi's operations.

(U) Secretary Powell described the group Ansar al-Islam in northern Iraq, and area that Powell said was outside of Saddam's control. He that an Iraqi agent that was in a senior position in Ansar al-Islam had offered al-Qaida safe haven in the north. The intelligence community agreed that al-Qa'ida and Ansar al-Islam had a relationship and that terrorist training and plotting was ongoing in northern Iraq.

(U) A February 2003 CIA report noted that "In an August 2000 meeting, al-Qa'ida officials met with three Kurdish Islamist leaders, now all senior AI officials, who agreed to provide al-Qa'ida a safehaven if the group lost Afghanistan as a sanctuary, according to a PUK detainee."[157] A separate CIA report noted that "Abu Wa'il, whose role as a senior AI official and close al-Qa'ida associate allows him to know the full scope of activities in northeastern Iraq and in Baghdad, was identified as an IIS associate by three detainees in PUK custody."[158]

(U) The link between Baghdad and Ansar al-Islam was, however, questioned in intelligence channels. An August 15, 2002 State Department INR assessment, *Terrorism: Al-Qaida's Presence in Iraq–An Update,* stated that "We still have not seen definitive evidence of cooperation between Saddam Hussein's regime and al-Qaida, but the Iraqi Intelligence Service (IIS) almost certainly is aware al-Qaida operatives are present in Iraq." Director Tenet's September 17, 2002 testimony to the Committee included that "Baghdad reportedly has had contacts with Ansar al-Islam that include IIS penetrations of the organization, but we cannot determine their frequency or purpose."

(U) Secretary Powell's UN speech repeated previous Administration statements about the length and number of contacts between Iraq and al-Qa'ida. This issue is addressed above. Secretary Powell did reference "an understanding that al-Qaida would no longer support activities against Baghdad."

(U) A May 14, 2002, CIA paper *Iraq: Strengthening Its Terrorist Capabilities*, noted that "In 1993, Bin Ladin reached an 'understanding' with Saddam under which al-Qa'ida forbade operations against the Iraqi leader, according to sensitive reporting that was released in US court documents during the Africa Embassy trial." The September 13, 2002, CIA paper *Terrorism: Contacts Between al-Qa'ida Officials and Iraqi Intelligence Officers* included a comment that "Sensitive reporting indicates that Bin Ladin reached an 'understanding' with Baghdad in 1993 that al-Qa'ida would not support any anti-Saddam activities. We have no information about how such an agreement might have been reached."

**Additional Statements**

[157] CIA Senior Executive Intelligence Brief, Terrorism: Ansar Al-Islam's Threat to the US (SEIB 03-028CHX) February 4, 2003.
[158] Abu Wa'il was one of the three AI officials in the February 2003 CIA report.

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- "There is certainly evidence that al Qaeda people have been in Iraq. There is certainly evidence that Saddam Hussein cavorts with terrorists. I think that if you asked, do we know that he had a role in 9/11, no, we do not know that he had a role in 9/11. But I think that this is the test that sets a bar that is far too high." – *National Security Advisor Condoleezza Rice, Late Edition, September 8, 2002.*

- "He plays host to terrorist networks, assassinates his opponents, both in Iraq and abroad, and has attempted to assassinate a former president of the United States." - *Secretary of Defense Donald Rumsfeld, Testimony before the House Armed Services Committee, September 18, 2002.*

- "[Since we began after September 11th,] we do have solid evidence of the presence in Iraq of al Qaeda members, including some that have been in Baghdad. We have what we consider to be very reliable reporting of senior level contacts going back a decade, and of possible chemical and biological agent training. And when I say contacts, I mean between Iraq and al Qaeda. The reports of these contacts have been increasing since 1998. We have what we believe to be credible information that Iraq and al Qaeda have discussed safe haven opportunities in Iraq, reciprocal nonaggression discussions. We have what we consider to be credible evidence that al Qaeda leaders have sought contacts in Iraq who could help them acquire weapons of mass destruction capabilities. We do have -- I believe it's one report indicating that Iraq provided unspecified training relating to chemical and/or biological matters for al Qaeda members. There is, I'm told, also some other information of varying degrees of reliability that supports that conclusion of their cooperation." – *Secretary of Defense Donald Rumsfeld, Press briefing, September 26, 2002.*

- "We also know that Iraq is harboring a terrorist network, headed by a senior al Qaeda terrorist planner. The network runs a poison and explosive training center in northeast Iraq, and many of its leaders are known to be in Baghdad." – *President George W. Bush, Press conference, February 6, 2003.*

(U) These statements are consistent with those described above.

- "We know that al-Qaeda is operating in Iraq today, and that little happens in Iraq without the knowledge of the Saddam Hussein regime. We also know that there have been a number of contacts between Iraq and al-Qaeda over the years. We know Saddam has ordered acts of terror himself, including the attempted assassination of a former U.S. President" – *Secretary of Defense Donald Rumsfeld, Testimony before the Senate Armed Services Committee, September 19, 2002.*

- "... it's been pretty well confirmed that [Mohammed Atta] did go to Prague and he did meet with a senior official of the Iraqi intelligence service in Czechoslovakia last April, several months before the attack. Now, what the purpose of that was, what transpired between them, we simply don't know at this point, but that's clearly an avenue that we want to pursue." - *Vice President Richard Cheney, Meet the Press, December 9, 2001.*

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- "… We've seen in connection with the hijackers, of course, Mohamed Atta, who was the lead hijacker, did apparently travel to Prague on a number of occasions. And on at least one occasion, we have reporting that places him in Prague with a senior Iraqi intelligence official a few months before the attack on the World Trade Center. The debates about, you know, was he there or wasn't he there, again, it's the intelligence business. [Tim Russert:
What does the CIA say about that? Is it credible?] It's credible. But, you know, I think a way to put it would be it's unconfirmed at this point." - *Vice President Dick Cheney, Meet the Press, September 8, 2002.*

(U) Shortly after the 9/11 attacks, the intelligence community produced reports of a meeting between 9/11 hijacker Mohammad Atta and an Iraqi intelligence official. A September 17, 2001 CIA report, *Iraq: Indications of Possible Iraqi Links to Attacks*, noted "a foreign government service last Thursday reported that the local Iraqi Intelligence Service chief met in mid-April with suspected American Airlines Flight 11 hijacker Mohammad Atta.[159] Shortly thereafter, the CIA reported that Saddam Hussein was trying to "avert a US strike by asking other Arab governments to convey to Washington that Baghdad is not complicit in the 11 September attacks."[160]

(U) There were several intelligence reports between September 2001 and September 2002 that both repeated the initial claims that Atta met with Iraqi officials and stated that the claims could not be corroborated or verified. Some of the reports stated that the only confirmed trip by Atta to Prague was in 2000; most reports stated that a 2001 visit could not be confirmed.

(U) On November 1, 2001, a CIA report relayed the Czech Government's public confirmation that Atta met with an Iraqi intelligence official and cited a "foreign government service" as saying the meeting occurred. The CIA stated that the agency "cannot corroborate Atta's travel to Prague in April through travel or financial records but he could have traveled under an alias" and that CIA has no new information on the substance of the alleged meetings."[161] A follow-up CIA report on March 19, 2002, said that the CIA was "pursuing conflicting leads and repeated that it was "trying to confirm a report that American Airlines Flight 11 hijacker Muhammad Atta met with Iraqi intelligence officer al-Ani in Prague in April of last year."[162] The report stated that "Neither the Czechs nor we have been able to verify Atta's alleged trip to Prague in April of last year."

(U) A May 14, 2002 CIA report again cited the foreign government service reporting from September 2001 and said that "Fragmentary intelligence reporting points to indirect ties between Baghdad and the 11 September hijackers but offers no conclusive indication of Iraqi complicity

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[159] Central Intelligence Agency SEIB, *Iraq: Indications of Possible Iraqi Links to Attacks*, September 17, 2001.
[160] Central Intelligence Agency SEIB, *Iraq: Using Back Channels To Refute Terrorist Allegations*, September 28, 2001.
[161] [redacted] Central Intelligence Agency, SPWR titled, *Terrorism: Muhammed Atta's travels to Prague* [redacted] November 1, 2001.
[162] CIA, SPWR dated March 19, 2002, *Terrorism: Reporting on Muhammad Atta in Prague.*

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or foreknowledge. Foreign government service sensitive reporting in September indicated that Muhammad Atta met with an IIS officer in Prague in April of 2001. There is contradictory reporting on this trip and we have not been able to verify Atta's reported trip through other channels."[163] A DIA report on July 31, 2002 stated that "There are significant information gaps in this reporting that render the issue impossible to prove or disprove with available information."[164]

**Conclusions**

**(U) Conclusion 10: Statements in the major speeches analyzed, as well additional statements, regarding Iraq's support for terrorist groups other than al-Qa'ida were substantiated by intelligence information.**
The intelligence community reported regularly on Iraq's safe harbor and financial support for Palestinian rejectionist groups, the Abu Nidal Organization, and others. The February 2002 NIE fully supported the claim that Iraq had, and would continue, to support terrorist groups.

**(U) Conclusion 11: Statements that Iraq provided safe haven for Abu Musab al-Zarqawi and other al-Qa'ida-related terrorist members were substantiated by the intelligence assessments.**
Intelligence assessments noted Zarqawi's presence in Iraq and his ability to travel and operate within the country. The intelligence community generally believed that Iraqi intelligence must have known about, and therefore at least tolerated, Zarqawi's presence in the country.

**(U) Conclusion 12: Statements and implications by the President and Secretary of State suggesting that Iraq and al-Qa'ida had a partnership, or that Iraq had provided al-Qa'ida with weapons training, were not substantiated by the intelligence.**
Intelligence assessments, including multiple CIA reports and the November 2002 NIE, dismissed the claim that Iraq and al-Qa'ida were cooperating partners. According to an undisputed INR footnote in the NIE, there was no intelligence information that supported the claim that Iraq would provide weapons of mass destruction to al-Qa'ida. The credibility of the principal intelligence source behind the claim that Iraq had provided al-Qa'ida with biological and chemical weapons training was regularly questioned by DIA, and later by the CIA. The Committee repeats its conclusion from a prior report that "assessments were inconsistent regarding the likelihood that Saddam Hussein provided chemical and biological weapons (CBW) training to al-Qa'ida."[165]

**(U) Conclusion 13: Statements in the major speeches analyzed, as well additional statements, regarding Iraq's contacts with al-Qa'ida were substantiated by intelligence information. However, policymakers' statements did not accurately convey the intelligence assessments of the nature of these contacts, and left the impression that the contacts led to substantive Iraqi cooperation or support of al-Qa'ida.**

[163] CIA, SPWR dated May 14, 2002 titled, *Iraq: Strengthening Its Terrorist Capabilities.*
[164] DIA, July 31, 2002 DIA Special Analysis, *Iraq's Inconclusive Ties to al-Qaida.*
[165] *Report on Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare With Prewar Assessments*, Senate Select Committee on Intelligence, Senate Report 109-331, September 8, 2006.

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**(U) Conclusion 14. The Intelligence Community did not confirm that Muhammad Atta met an Iraqi intelligence officer in Prague in 2001.**

**Postwar Findings**

(U) The Committee issued a number of conclusions in its September 2006 report, *Postwar Findings about Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments*, relating to the pre-war links between Iraq and terrorism. The Committee found the following.

(U) Iraq and al-Qa'ida did not have a cooperative relationship. Saddam Hussein was distrustful of al-Qa'ida and viewed Islamic extremists as a threat to his regime, refusing all requests from al-Qa'ida to provide material or operational support.

(U) Most of the contacts cited between Iraq and al-Qa'ida before the war by the intelligence community and policymakers have been determined not to have occurred. One of the reported contacts has been confirmed, and two other meetings have since been identified.

(U) Postwar information supports prewar assessments and statements that Abu Musab al-Zarqawi was in Baghdad and that al-Qa'ida was present in northern Iraq.

(U) No postwar information has been found that indicates Iraq provided chemical and biological weapons training to al-Qa'ida. The detainee who provided the key prewar reporting about this training recanted his claims after the war. In 2004, Ibn Shaykh al-Libi recanted his earlier statements about biological and chemical weapons training. Al-Libi told debriefers that he had fabricated information while in US custody to receive better treatment and in response to threats of being transferred to a foreign intelligence service which he believed would torture him. He also said that later, while he was being debriefed by a foreign intelligence service, he fabricated more information in response to physical abuse and threats of torture. The Committee's prior report on post-war findings cited a CIA officer who explained that while CIA believes that al-Libi fabricated information, the CIA cannot determine whether, or what portions of, the original statements or the later recants are true or false.[166]

(U) Intelligence gathered after the war has led analysts to doubt that Mohamed Atta had meetings with Iraq officials in the Czech Republic. According to the Committee's prior report, "Postwar findings support CIA's January 2003 assessment, which judged that 'the most reliable reporting casts doubt' on one of the leads, an alleged meeting between Muhammad Atta and an Iraqi intelligence officer in Prague, and confirm that no such meeting occurred."[167]

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[166] *Report on Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare With Prewar Assessments*, Senate Select Committee on Intelligence, Senate Report 109-331, September 8, 2006, 108.
[167] CIA, *Iraqi Support for Terrorism*, January 2003, as quoted and described in *Report on Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare With Prewar Assessments*, Senate Select Committee on Intelligence, Senate Report 109-331, September 8, 2006.

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**VIII. Intent**

- "And containment is not possible when dictators obtain weapons of mass destruction, and are prepared to share them with terrorists who intend to inflict catastrophic casualties on the United States." - *Vice President Richard Cheney, Nashville, Tennessee, August 26, 2002*

- "Saddam Hussein's regime is a grave and gathering danger. To suggest otherwise is to hope against the evidence. To assume this regime's good faith is to bet the lives of millions and the peace of the world in a reckless gamble." - *President George W. Bush, Address to the United Nations General Assembly, September 12, 2002*

- "In cells and camps, terrorists are plotting further destruction, and building new bases for their war against civilization. And our greatest fear is that terrorists will find a shortcut to their mad ambitions when an outlaw regime supplies them with the technologies to kill on a massive scale. In one place – in one regime – we find all these dangers, in their most lethal and aggressive forms, exactly the kind of aggressive threat the United Nations was born to confront." - *President George W. Bush, Address to the United Nations General Assembly, September 12, 2002*

- "Iraq could decide on any given day to provide a biological or chemical weapon to a terrorist group or individual terrorists." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "Facing clear evidence of peril we cannot wait for the final proof – the smoking gun – that could come in the form of a mushroom cloud." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "We could wait and hope that Saddam does not give weapons to terrorists, or develop a nuclear weapon to blackmail the world. But I'm convinced that is a hope against all evidence." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "With nuclear arms or a full arsenal of chemical and biological weapons, Saddam Hussein could resume his ambitions of conquest in the Middle East and create deadly havoc in that region." - *President George W. Bush, State of the Union Address, January 29, 2003*

- "Evidence from intelligence sources, secret communications, and statements by people now in custody reveal that Saddam Hussein aids and protects terrorists, including members of al-Qaida. Secretly, and without fingerprints, he could provide one of his hidden weapons to terrorists, or help them develop their own." - *President George W. Bush, State of the Union Address, January 29, 2003*

- "Some believe, some claim these contacts do not add up to much. They say Saddam Hussein's secular tyranny and al-Qaida's religious tyranny do not mix. I am not comforted by this thought. Ambition and hatred are enough to bring Iraq and al-Qaida

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together, enough so al-Qaida could learn how to build more sophisticated bombs and learn how to forge documents, and enough so that al-Qaida could turn to Iraq for help in acquiring expertise on weapons of mass destruction." - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

- "We know that Saddam Hussein is determined to keep his weapons of mass destruction, is determined to make more. Given Saddam Hussein's history of aggression, given what we know of his grandiose plans, given what we know of his terrorist associations, and given his determination to exact revenge on those who oppose him, should we take the risk that he will not someday use these weapons at a time and a place and in a manner of his choosing, at a time when the world is in a much weaker position to respond?" - *Secretary of State Colin Powell, Address to the United Nations Security Council, February 5, 2003*

(U) In major policy speeches the President, the Vice President and the Secretary of State all discussed Iraq's intentions regarding weapons of mass destruction. Both the President and the Vice President indicated that Saddam Hussein was prepared to share weapons of mass destruction with terrorist groups.

***Vice President's Speech in Tennessee (August 26, 2002)***

(U) In the Vice President's August 2002 speech on Iraq, he discussed "the case of Saddam Hussein", and indicated that Saddam was "prepared to share [weapons of mass destruction] with terrorists who intend to inflict catastrophic casualties on the United States."[168]

(U) At the time of the Vice President's speech, the intelligence community did not assess that Saddam Hussein was prepared to share weapons of mass destruction with terrorists. The intelligence community had previously assessed that Saddam was interested in acquiring WMD to counter his neighbors' capabilities, deter hostile foreign powers (including Israel, Iran, and the US-led Coalition) and as a means of achieving "regional preeminence."

(U) The intelligence community had also assessed that Saddam was unlikely to take actions that he believed would threaten the survival of his regime, and that he believed hostile actions such as a re-invasion of Kuwait would in fact threaten his regime's survival.

(U) There were few recent coordinated intelligence assessments regarding Saddam Hussein's intentions at the time of the Vice President's speech. In 1998 the intelligence community had assessed that "Saddam has three primary, and interrelated, goals: maintaining power, having sanctions lifted as soon as possible, and, over the long term, reasserting Iraq's regional dominance...Saddam is committee to seeing Iraq reemerge as the dominant power in the region: He is determined to retain elements of his WMD programs so that he will be able to intimidate Iraq's neighbors and deter potential adversaries, such as Iran, Israel, and the United States".[169]

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[168] White House Transcript, *Vice President Speaks at VFW 103rd National Convention*, August 26, 2002.
[169] Intelligence Community Brief, *Iraq: Prospects for Confrontation*, July 17, 1998.

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(U) In 1999 the intelligence community produced a National Intelligence Estimate (NIE) entitled *Iraqi Military Capabilities through 2003*, which discussed Saddam's likely perceptions and intentions. In 2004, the National Intelligence Council informed the SSCI that the views expressed in the 1999 NIE were "generally held by the IC until well into 2002 with some views carried over into" an October 2002 NIE on Saddam's military intentions and capabilities.[170]

(U) Specifically, the 1999 NIE noted that:

> (U) Reading Saddam's intentions is difficult. He can be impulsive and deceptive; critical factors in shaping his behavior are largely hidden from us...But there are two fundamental guideposts that drive our calculus of his actions. First, we judge that Saddam would be careful not to place his regime's survival at risk. Second, he probably believes that a re-invasion of Kuwait would provoke a Coalition response that could threaten to destroy his regime.
>
> (U) ...We judge that Saddam continues to believe that Iraq needs WMD and long-range missiles to: 1) counter Israeli and Iranian capabilities...; 2) deter military attacks, including by Coalition forces; 3) achieve regional preeminence.[171]

(U) A separate CIA memorandum on this topic, published in December 2001, stated that "Saddam sees himself as a pan-Arab leader and views his regime as the most glorious chapter in Iraqi history...His decisionmaking is guided by opportunism, distrust for others, a personal need for power, and the sense that he is an historic figure who must take bold risks to advance Iraq's interests. He views state power primarily in military terms – twice launching wars against his neighbors – and his strategic aim is to establish Iraq as the preeminent power in the Persian Gulf."

***President's Speech to the UN General Assembly (September 12, 2002)***

(U) In the President's September 2002 speech to the United Nations General Assembly, he stated that Saddam Hussein was a "grave and gathering danger", and that to assume Saddam's good faith would be tantamount to betting "the lives of millions and the peace of the world in a reckless gamble."

(U) The President also implied that the Iraqi regime was dangerous because it might provide weapons of mass destruction to terrorists ("And our greatest fear is that terrorists will find a shortcut to their mad ambitions when an outlaw regime supplies them with the technologies to kill on a massive scale. In one place – in one regime – we find all these dangers....").[172]

(U) The intelligence community did not assess that Saddam Hussein dealt with other countries in good faith, and assessments regarding the potential use of WMD were not based on

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[170] *Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq,* Senate Report 108-301, July 9, 2004.
[171] National Intelligence Estimate, *Iraqi Military Capabilities through 2003,* 1999.
[172] White House Transcript, *President's Remarks at the United Nations General Assembly,* September 12, 2002.

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assumptions of good faith. The 1999 NIE on Iraqi military capabilities noted that it was difficult to gauge Saddam's intentions, but judged that he would be careful not to put his regime's survival at risk.[173]

(U) At the time of the President's UN speech, the October 2002 NIE was still being prepared, and was two weeks away from release. While the document itself was not available at this time, its consistency with the 1999 NIE, and the lack of contradictory assessments in the intervening four year period, illustrate the continuity of the intelligence community's judgments on this topic.

(U) The October 2002 NIE assessed that "Saddam's past actions suggest that a decision to use WMD probably would come when he feels his personal survival is at stake even after he has exhausted all political, military and diplomatic options". It noted that the US would be unlikely to know when Saddam felt that he had no other options for self-preservation, but pointed out that "Iraq's methodical conventional defensive preparations also suggest Saddam thinks an attack is not imminent".[174]

(U) Additionally, the NIE pointed out that "Iraq's historical use of CW against Iran and its decision not to use WMD against Israel or Coalition forces in 1991 indicates that an opponent's retaliatory capability is a critical factor in Saddam's decisionmaking."[175]

(U) The NIE also examined a variety of ways in which Iraq might conceivably use WMD, and noted that overall "we have low confidence in our ability to assess when Saddam would use WMD."[176]

*President's Speech in Cincinnati (October 7, 2002)*

(U) The President spoke further on Iraqi intentions during his speech on Iraq in Cincinnati, where he said that "Iraq could decide on any given day to provide a biological or chemical weapon to a terrorist group or individual terrorists." In discussing Iraq's alleged nuclear program, he stated that "facing clear evidence of peril we cannot wait for the final proof – the smoking gun – that could come in the form of a mushroom cloud." Finally, he concluded that "we could wait and hope that Saddam does not give weapons to terrorists, or develop a nuclear weapon to blackmail the world. But I'm convinced that is a hope against all evidence."[177]

(U) While the October 2002 NIE assessed that Iraq possessed chemical and biological weapons, it judged that Saddam was unwilling to conduct terrorist attacks targeting the United States at that time. According to the NIE, "Baghdad for now appears to be drawing a line short of conducting terrorist attacks with conventional or CBW against the United States, fearing that exposure of Iraqi involvement would provide Washington a stronger case for making war."[178]

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[173] National Intelligence Estimate, *Iraqi Military Capabilities through 2003*, 1999.
[174] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002.
[175] Ibid.
[176] Ibid.
[177] White House Transcript, *President Bush Outlines Iraqi Threat*, October 7, 2002.
[178] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002.

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(U) The NIE concluded that Iraq would be more likely to conduct a terrorist-style attack on the US if Saddam perceived that the US could not be deterred from invading Iraq and destroying his regime. It assessed that if he made such a decision, Saddam would be most likely to rely on Iraqi intelligence officers under his command. It considered the possibility of Saddam employing an outside terrorist group to assist in such an attack, and concluded that this "extreme step" was conceivable if Saddam were "sufficiently desperate" and seeking a "last chance to exact vengeance." The NIE also noted that "although Saddam has not endorsed al-Qaida's overall agenda and has been suspicious of Islamist movements in general, apparently he has not been averse to some contacts with the organization." The NIE stated that the intelligence community had low confidence in its own ability to assess when Saddam might use WMD and whether he would engage in clandestine attacks on the US homeland.[179]

(U) As discussed elsewhere in this report, in October 2002 most intelligence agencies assessed that Iraq was reconstituting a nuclear weapons program. The State Department's Office of Intelligence and Research (State/INR) believed that Saddam Hussein wanted to possess nuclear weapons, and was maintaining some capabilities with dual uses, but judged that the available evidence did "not add up to a compelling case for reconstitution."[180]

***President's State of the Union Address (January 29, 2003)***

(U) In the President's 2003 State of the Union Address, he said that Saddam Hussein "could provide one of his hidden weapons to terrorists, or help them develop their own." He also stated that Saddam had "ambitions of conquest in the Middle East" that he could resume if he had "nuclear arms or a full arsenal of chemical and biological weapons".[181]

(U) As discussed, the October 2002 NIE judged that Saddam Hussein was unwilling to conduct terrorist attacks targeting the United States at that time. More generally, it suggested that Saddam would probably decide to use WMD only if he felt he had no other options for survival and that "an opponent's retaliatory capability" would be a key factor in making this decision.[182]

(U) A November 2002 NIE on nontraditional threats restated the October NIE's assessment about Saddam's willingness, if "sufficiently desperate" to employ an outside terrorist group to conduct an attack on the US as his "last chance for vengeance." This NIE included the caveats

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179 Ibid.

180 Ibid. As discussed in a previous Committee report (Senate Report 109-331) the Director of Central Intelligence also released a public statement regarding the President's speech. This statement did not specifically address the possibility of Saddam providing WMD to terrorists, but said "There is no inconsistency between our view of Saddam's growing threat and the view as expressed by the President in his speech. Although we think the chances of Saddam initializing a WMD attack are low – in part because it would constitute an admission that the [sic] possesses WMD – there is no question that the likelihood of Saddam using WMD against the United States or our allies in the region grows as his arsenal continues to build."

181 White House Transcript, *President Delivers "State of the Union"*, January 28, 2003.

182 Ibid.

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that the intelligence community had low confidence in these assessments, and that "INR believes that the intelligence community has no reporting to support this assertion."[183]

(U) The October 2002 NIE's conclusions were essentially repeated again in a January 2003 Intelligence Community Assessment which said that "Saddam probably will not initiate hostilities for fear of providing Washington with justification to invade Iraq. Nevertheless, he might deal the first blow, especially if he perceives that an attack intended to end his regime is imminent."[184]

(U) Neither of these reports specifically focused on what Saddam might do if he had nuclear weapons or a "full arsenal" of chemical and biological weapons, possibly because the intelligence community believed that Iraq was still years away from possessing either of these.

***Secretary of State's Address to the UN Security Council (February 5, 2003)***

(U) In the Secretary of State's February 2003 address to the United Nations Security Council, he stated that "ambition and hatred are enough to bring Iraq and al-Qaida together", and that "al-Qaida could turn to Iraq for help in acquiring expertise on weapons of mass destruction."[185]

(U) The intelligence community did not assess that Iraq and al-Qaida had a cooperative relationship. In June 2002 the CIA wrote that "in contrast to the traditional patron-client relationship Iraq enjoys with secular Palestinian groups, the ties between Saddam and bin Ladin appear much like those between rival intelligence services, with each trying to exploit the other for its own benefit."[186] While there was evidence of limited contacts throughout the 1990s, the CIA did not assess that these contacts added up to an established, cooperative relationship. In a January 2003 report the CIA noted that the Iraqi regime and al-Qaida shared mutual enemies, and that several reports of varying reliability mentioned "the involvement of Iraq or Iraqi nationals in al-Qaida's efforts to obtain CBW [chemical and biological weapons] training. However, the same report also assessed that "Saddam Husayn and Usama bin Laden are far from being natural partners", and stated that while there was little specific intelligence about Saddam's opinion of al-Qaida, "his record suggests that any such ties would be rooted in deep suspicion."[187]

(U) The Committee is also aware of intelligence provided directly to the Secretary by the CIA which echoed these assessments.

(U) As discussed, the October 2002 NIE assessed that Saddam Hussein was unwilling to provide weapons of mass destruction to terrorist groups at that time, because he did not want to put his

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[183] National Intelligence Estimate, *Nontraditional Threats to the US Homeland Through 2007*, November 2002
[184] Intelligence Community Assessment, *Key Warnings for 2003*, January 2003.
[185] White House Transcript, *U.S. Secretary of State Colin Powell Addresses the U.N. Security Council*, February 5, 2003.
[186] CIA, *Iraq and al-Qa'ida: Interpreting a Murky Relationship*, June 21, 2002.
[187] CIA, *Iraqi Support for Terrorism*, January 29, 2003. The Iraqi regime's possible links to terrorist groups are discussed in the Terrorism section of this report.

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regime's survival at risk. It noted that information on possible training of terrorists was "second hand, or from sources of varying reliability."[188]

**Additional Statements**

- "And as I have said repeatedly, Saddam Hussein would like nothing more than to use a terrorist network to attack and to kill and leave no fingerprints behind." – *President George W. Bush, Remarks with British Prime Minister Tony Blair, January 31, 2003*

- "Every world leader that comes to see me, I explain our concerns about a nation which is not conforming to agreements that it made in the past; a nation which has gassed her people in the past; a nation which has weapons of mass destruction and apparently is not afraid to use them." – *President George W. Bush, Press Conference, March 13, 2002*

- "Simply stated, there is no doubt that Saddam Hussein now has weapons of mass destruction. There is no doubt that he is amassing them to use them against our friends, against our allies and against us. And there is no doubt that his aggressive regional ambitions will lead him into future confrontations with his neighbors; confrontations that will involve both the weapons that he has today and the ones he will continue to develop with his oil wealth." – *Vice President Dick Cheney, Statement before the Veterans of the Korean War, San Antonio, Texas, August, 29, 2002*

- "But we should be just as concerned about the immediate threat from biological weapons. ... Iraq has these weapons. They're simpler to deliver and even more readily transferred to terrorist networks, who could allow Iraq to deliver them without Iraq's fingerprints." – *Secretary of Defense Donald Rumsfeld, Testimony before the HASC, September 18, 2002*

- "There are a number of terrorist states pursuing weapons of mass destruction -- Iran, Libya, North Korea, Syria to name but a few. But no terrorist state poses a greater or more immediate threat to the security of our people and the stability of the world than the regime of Saddam Hussein in Iraq." – *Secretary of Defense Donald Rumsfeld, Testimony before the House Armed Services Committee, September 18, 2002*

- "We do know that the Iraqi regime currently has chemical and biological weapons of mass destruction, and we do know they're currently pursuing nuclear weapons, that they have a proven willingness to use those weapons at their disposal and that they've proven an aspiration to seize the territory of and threaten their neighbors, proven support for and cooperation with terrorist networks and proven record of declared hostility and venomous rhetoric against the United States. Those threats should be clear to all." – *Secretary of Defense Donald Rumsfeld, Testimony before the House Armed Services Committee, September 18, 2002*

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[188] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002.

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- "He's hostile to our country. Because we have denied him the ability he has fought to impose his will on his neighbors, he has said in no uncertain terms that he would use weapons of mass destruction against the United States. He has at this moment stockpiles of chemical and biological weapons." – *Secretary of Defense Donald Rumsfeld, Testimony before the HASC, September 18, 2002*

- "There are ways Iraq can easily conceal responsibility for a WMD attack. For example, they could give biological weapons to terrorist networks to attack the United States from within and then deny any knowledge. Suicide bombers are not deterrable." – *Secretary of Defense Donald Rumsfeld, Testimony before the House Armed Services Committee, September 18, 2002*

- "Moreover, if he decided it was in his interest to conceal his responsibility for an attack on the U.S., providing WMD to terrorists would be an effective way of doing so." – *Secretary of Defense Donald Rumsfeld, Testimony before the Senate Armed Services Committee, September 19, 2002*

- "We now see that a proven menace like Saddam Hussein, in possession of weapons of mass destruction, could empower a few terrorists to threaten millions of innocent people." – *Secretary of State Colin Powell, Testimony before the House Committee on International Relations, September 19, 2002*

- "Every month that goes by, his WMD programs are progressing and he moves closer to his goal of possessing the capability to strike our population, and our allies, and hold them hostage to blackmail." - *Secretary of Defense Donald Rumsfeld, Prepared Testimony before the SASC, September 19, 2002*

- "Al Qa'ida hides, Saddam doesn't, but the danger is, is that they work in concert. The danger is, is that al Qa'ida becomes an extension of Saddam's madness and his hatred and his capacity to extend weapons of mass destruction around the world...[Y]ou can't distinguish between al Qa'ida and Saddam when you talk about the war on terror." – *President George W. Bush, Remarks with Columbian President Uribe, September 25, 2002*

- "Each passing day could be the one on which the Iraqi regime gives anthrax or VX -- nerve gas -- or some day a nuclear weapon to a terrorist ally." – *President George W. Bush, Remarks in the Rose Garden with Congressional Leaders, September 26, 2002*

- "We know that the Iraqi regime is led by a dangerous and brutal man. We know he is actively seeking the destructive technologies to match his hatred. And we know that he must be stopped. The dangers we face will only worsen from month to month and year to year. To ignore these threats is to encourage them -- and when they have fully materialized, it may be too late to protect ourselves and our allies. By then, the Iraqi dictator will have had the means to terrorize and dominate the region, and each passing day could be the one on which the Iraqi regime gives anthrax or VX nerve gas or

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someday a nuclear weapon to a terrorist group." *– President George W. Bush, Radio Address, September 28, 2002*

- "The danger to America from the Iraqi regime is grave and growing. The regime is guilty of beginning two wars. It has a horrible history of striking without warning. In defiance of pledges to the United Nations, Iraq has stockpiled biological and chemical weapons and is rebuilding the facilities used to make more of those weapons. Saddam Hussein has used these weapons of death against innocent Iraqi people, and we have every reason to believe he will use them again. Iraq has longstanding ties to terrorist groups which are capable of, and willing to, deliver weapons of mass death." *– President George W. Bush, Radio Address, October 5, 2002*

- "Indeed, the more time passes the more time Saddam Hussein has to develop his deadly weapons and to acquire more. The more time he has to plant sleeper agents in the United States and other friendly countries or to supply deadly weapons to terrorists he can then disown, the greater the danger. The notion that we can wait until the threat is imminent assumes that we will know when it is imminent." *– Deputy Secretary of Defense Paul Wolfowitz, Remarks at Fletcher Conference, October 16, 2002*

- "After September the 11th, we've entered into a new era and a new war. This is a man that we know has had connections with al Qa'ida. This is a man who, in my judgment, would like to use al Qa'ida as a forward army." *– President George W. Bush, Remarks in Dearborn, Michigan, October 14, 2002*

- "His regime has had high-level contacts with al Qa'ida going back a decade and has provided training to al Qa'ida terrorists. And as the President has said, 'Iraq could decide on any given day to provide biological or chemical weapons to a terrorist group or to individual terrorists' -- which is why the war on terror will not be won till Iraq is completely and verifiably deprived of weapons of mass destruction." *– Vice President Dick Cheney, Remarks at the Air National Guard Conference, December 2, 2002*

- "He has weapons of mass destruction, the world's deadliest weapons, which pose a direct threat to the United States, our citizens and our friends and allies." *– President George W. Bush, Remarks with Economists, January 21, 2003*

- "The more we wait, the more chance there is for this dictator with clear ties to terrorist groups, including Al-Qaida, more time for him to pass a weapon, share a technology, or use these weapons again." *– Secretary of State Colin Powell, remarks at the World Economic Forum, January 26, 2003*

- "Saddam Hussein's pursuit of weapons of mass destruction poses a grave danger -- not only to his neighbors, but also to the United States. His regime aids and protects terrorists, including members of al Qa'ida. He could decide secretly to provide weapons of mass destruction to terrorists for use against us. And as the President said on Tuesday night, it would take just one vial, one canister, one crate to bring a day of horror to our

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nation unlike any we have ever known." – *Vice President Dick Cheney, Remarks to the Conservative PAC, January 30, 2003*

- "I believe Saddam Hussein is a threat to the American people. I believe he's a threat to the neighborhood in which he lives. And I've got a good evidence to believe that. He has weapons of mass destruction, and he has used weapons of mass destruction in his neighborhood and on his own people. He's invaded countries in his neighborhood. He tortures his own people. He's a murderer. He has trained and financed Al Qaida-type organizations before -- Al Qaida and other terrorist organizations." – *President George W. Bush, News Conference, March 6, 2003*

- "[The Iraqi regime] has a deep hatred of America and our friends. And [Iraq] has aided, trained and harbored terrorists, including operatives of al Qa'ida. The danger is clear: using chemical, biological or, one day, nuclear weapons obtained with the help of Iraq, the terrorists could fulfill their stated ambitions and kill thousands or hundreds of thousands of innocent people in our country or any other." – *President George W. Bush, Address to the Nation, March 17, 2003*

(U) The above statements are all consistent with the five policy speeches analyzed.

**Conclusions**

**(U) Conclusion 15: Statements by the President and the Vice President indicating that Saddam Hussein was prepared to give weapons of mass destruction to terrorist groups for attacks against the United States were contradicted by available intelligence information.** The October 2002 National Intelligence Estimate assessed that Saddam Hussein did not have nuclear weapons, and was unwilling to conduct terrorist attacks the US using conventional, chemical or biological weapons at that time, in part because he feared that doing so would give the US a stronger case for war with Iraq. This judgment was echoed by both earlier and later intelligence community assessments. All of these assessments noted that gauging Saddam's intentions was quite difficult, and most suggested that he would be more likely to initiate hostilities if he felt that a US invasion was imminent.

**Postwar Findings**

(U) Postwar findings indicate that Saddam Hussein was distrustful of al-Qaida and viewed Islamic extremists as a threat to his regime, and refused all requests from al-Qaida to provide material or operational support. No postwar information indicates that Saddam ever considered using any terrorist group to attack the United States.

(U) In 2004, the Iraq Survey Group concluded that Saddam had aspired to rebuild weapons of mass destruction capabilities if and when international sanctions ended, but that the Iraqi regime had no strategy or plan for the eventual revival of such capabilities.

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(U) The Iraq Survey Group also concluded that Saddam and his advisors had judged that a US invasion was the greatest potential threat to regime survival, but that Saddam believed that such an invasion was very unlikely. According to the Survey Group's findings, Saddam's military policies were based primarily on his desire to deter neighboring countries – particularly Iran – from taking direct military action against him.[189]

[189] *Report on Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare With Prewar Assessments*, Senate Select Committee on Intelligence, Senate Report 109-331, September 8, 2006.

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**IX. Post-War Iraq**

- "Regime change in Iraq would bring about a number of benefits to the region. When the gravest of threats are eliminated, the freedom-loving peoples of the region will have a chance to promote the values that can bring lasting peace. As for the reaction of the Arab 'street,' the Middle East expert Professor Fouad Ajami predicts that after liberation, the streets in Basra and Baghdad are 'sure to erupt in joy in the same way the throngs in Kabul greeted the Americans.' - *Vice President Richard Cheney, Nashville, Tennessee, August 26, 2002*

- "With our help, a liberated Iraq can be a great nation once again. Iraq is rich in natural resources and human talent, and has unlimited potential for a peaceful, prosperous future. Our goal would be an Iraq that has territorial integrity, a government that is democratic and pluralistic, a nation where the human rights of every ethnic and religious group are recognized and protected. In that troubled land all who seek justice, and dignity, and the chance to live their own lives, can know they have a friend and ally in the United States of America." - *Vice President Richard Cheney, Nashville, Tennessee, August 26, 2002*

- "The lives of Iraqi citizens would improve dramatically if Saddam Hussein were no longer in power, just as the lives of Afghanistan's citizens improved after the Taliban." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

- "Iraq is a land rich in culture, resources, and talent. Free from the weight of oppression, Iraq's people will be able to share in the progress and prosperity of our time. If military action is necessary, the United States and our allies will help the Iraqi people rebuild their economy, and create the institutions of liberty in a unified Iraq at peace with its neighbors." - *President George W. Bush, Cincinnati, Ohio, October 7, 2002*

**Intelligence**

(U) The Committee summarized and analyzed the intelligence products written between April 19, 1999 and the initiation of Operation Iraqi Freedom on March 19, 2003 in its previous report, *Prewar Intelligence Assessments About Postwar Iraq*.[190] The Committee received dozens of all-source intelligence reports as part of this review. As described in that report, two Intelligence Community Assessments (ICAs) provided the best snapshots of the IC's views on postwar Iraq. Both were produced in January 2003, and thus are not applicable in determining whether statements made in August and October of 2002 were substantiated by the intelligence information.

(U) The Defense Intelligence Agency produced two briefing presentations in April 2002 that discussed the challenges that could arise for US military and coalition forces in the Phase IV post-combat phase of the war plan for Iraq.[191] The first DIA briefing assessed that the Iraqi

[190] Senate Select Committee on Intelligence, *Prewar Intelligence Assessments About Postwar Iraq*, May 31, 2007. An unclassified copy of this report can be found at http://intelligence.senate.gov/prewar.pdf
[191] DIA, *Knowledge of Iraqi Society: Policymaker Need for Insight* and *Looking at Post-Saddam Iraq*, April 2002.

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Baath Party "will attempt to return by any means necessary" that "large portions of the population will remain intimidated," and that the "Iraqi populace will adopt an ambivalent attitude toward liberation." The briefing also assessed that "Significant force protection threats will emerge from the Baathists, the Jihadists and Arab nationalists who oppose any US occupation of Iraq."[192]

(U) The second DIA briefing noted that "managing rivalries will be a major challenge to the new regime." DIA assessed that most seams and fissures will remain, but should be manageable and noted that most rivalries are intra-communal, not between ethnic or religious groups." It also outlined that potential post-war challenges that included, "preventing Kurdish separation, eradicating terrorists in Ansar area, managing inter-ethnic/tribal violence, gaining control of the regime's geographic power base, and accounting for WMD." [193]

(U) In August 2002, the CIA produced a report, *Can Iraq Ever Become A Democracy?*, at the request of the National Security Council. In the report's scope note, the CIA stated that:

> "This assessment fully accepts that traditional Iraqi political culture has been inhospitable to democracy. Nevertheless, we feel it is appropriate to explore, in a necessarily initial and speculative fashion, to what extent post-Saddam Iraq might possess some democratic building blocks, and under what circumstances these blocks might be used to construct a democratic government in post-Saddam Iraq."[194]

(U) The report stated that, "On the surface, Iraq currently appears to lack both the socio-economic and politico-cultural prerequisites that political scientists generally regard as necessary to nurture democracy. Nevertheless, we believe that Iraq has several advantages that, if buttressed by the West, could foster democracy in post-Saddam Iraq."[195] The advantages cited by the report included the return of exiled elites, a weak tradition of political Islam, near-universal revulsion against Saddam's dictatorship, and economic resources. The report emphasized that "None of these factors should be seen as minimizing the obstacles to democratization in Iraq after Saddam."[196]

(U) The CIA also pointed to Iraqi Kurdistan as a potential model for democratic development in the rest of Iraq. The report noted, for example, that "Iraqi Kurdistan has become one of the more democratic regions in the Middle East. In 1991 it was as badly off–both economically and from the viewpoint of political culture and history–as the rest of Iraq would likely be should Saddam be defeated."[197]

(U) The report noted such "words of caution" as "we are uncertain how rapidly Iraq… can recover from the massive socio-economic and political damage inflicted by Saddam, especially since 1991." The report assessed that without "long-term, active US/Western military, political,

[192] Ibid
[193] Ibid
[194] CIA, *Can Iraq Ever Become a Democracy?*, August 8, 2002, pp. i - iv.
[195] Ibid, p. iii
[196] Ibid, p. iii
[197] Ibid, p. 1

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and economic involvement with the country" the chance of achieving even "the partial democratic successes of, for example, Iraqi Kurdistan to be poor." [198]

(U) The report assessed that, "In theory, Iraq should be better placed than its current dire economic statistics and dictatorial government suggest to recuperate lost ground and forge a more modern society once Saddam is toppled. It is also possible, however, that Saddam's rule has damaged the Iraqi body politic and set back Iraqi socio-economic development in more severe ways that will require many more years to overcome. We simply cannot know until the dictator is gone." [199]

(U) The CIA wrote a second August 2002 intelligence assessment in response to tasking by the National Security Council. This report, *The Perfect Storm: Planning for Negative Consequences of Invading Iraq,* was intended to set forth worst-case scenarios that might emerge from US-led regime change in Iraq. The scope note stated that the "spirit of the paper reaches beyond what we normally would assess as plausible" and that the report was intended to "look at a number of situations that, when taken separately or together, could complicate US efforts in a campaign against Iraq." The negative consequences highlighted in the paper were: anarchy and territorial breakup in Iraq; instability in key Arab states; a surge of global terrorism and deepening Islamic antipathy toward the United States; major oil supply disruptions; and severe strains in the Atlantic alliance.

(U) In October 2002, the National Intelligence Council published a National Intelligence Estimate (NIE), entitled *Saddam's Preparations for War: Intentions and Capabilities*.[200] While not the central focus of the NIE, it did note that "...US and Coalition forces will face enormous requirements to meet the humanitarian needs of Iraqi civilians. If Saddam adopted a scorched earth policy – and some intelligence reporting suggests he will – advancing forces will be confronted with large-scale destruction of oil and power facilities, the contamination of food supplies and other potential environmental devastation."[201]

**Additional Statements**

- "Now, I think things have gotten so bad inside Iraq, from the standpoint of the Iraqi people, my belief is we will, in fact, be greeted as liberators." - *Vice President Richard Cheney, Meet the Press, March 16, 2003.*

- MR. RUSSERT: If your analysis is not correct, and we're not treated as liberators, but as conquerors, and the Iraqis begin to resist, particularly in Baghdad, do you think the American people are prepared for a long, costly, and bloody battle with significant American casualties? VICE PRESIDENT CHENEY: Well, I don't think it's likely to unfold that way, Tim, because I really do believe that we will be greeted as liberators. - *Vice President Richard Cheney, Meet the Press, March 16, 2003.*

[198] Ibid, pp. i - iv.
[199] CIA, *Can Iraq Ever Become a Democracy?,* August 8, 2002, pp. i - iv.
[200] NIC, *Saddam's Preparations for War: Intentions and Capabilities*, October 2002, p i
[201] NIC, *Saddam's Preparations for War: Intentions and Capabilities*, October 2002, p i

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- MR. RUSSERT: Every analysis said this war itself would cost about $80 billion, recovery of Baghdad, perhaps of Iraq, about $10 billion per year. We should expect as American citizens that this would cost at least $100 billion for a two-year involvement. VICE PRESIDENT CHENEY: I can't say that, Tim. There are estimates out there. It's important, though, to recognize that we've got a different set of circumstances than we've had in Afghanistan.... In Iraq you've got a nation that's got the second-largest oil reserves in the world, second only to Saudi Arabia. It will generate billions of dollars a year in cash flow if they get back to their production of roughly three million barrels of oil a day, in the relatively near future. - *Vice President Richard Cheney, Meet the Press, March 16, 2003.*

- "... The point is this is not a nation without resources, and when it comes time to rebuild and to make the kinds of investments that are going to be required to give them a shot at achieving a truly representative government, a successful government, a government that can defend itself and protect its territorial integrity and look to the interests of its people, Iraq starts with significant advantages. It's got a well-trained middle class, a highly literate work force, a high degree of technical sophistication. This is a country that I think, but for the rule of Saddam Hussein and his brutality and his diversion of the nation's resources and his pursuit of weapons of mass destruction, can be one of the leading, perhaps the leading state in that part of the world in terms of developing a modern state and the kind of lifestyle that its people are entitled to." - *Vice President Richard Cheney, Meet the Press, March 16, 2003.*

- MR. RUSSERT: And you are convinced the Kurds, the Sunnis, the Shiites will come together in a democracy? VICE PRESIDENT CHENEY: They have so far. One of the things that many people forget is that the Kurds in the north have been operating now for over 10 years under a sort of U.S.-provided umbrella with respect to the no-fly zone, and they have established a very strong, viable society with elements of democracy and important part of it.... - *Vice President Richard Cheney, Meet the Press, March 16, 2003.*

- "... I think the prospects of being able to achieve this kind of success, if you will, from a political standpoint, are better than they would be for virtually any other country in under similar circumstances in that part of the world." - *Vice President Richard Cheney, Meet the Press, March 16, 2003.*

(U) These statements were made roughly five months later than the statements in the major speeches described above, and the intelligence community had written several intelligence products in the intervening period. In particular, the National Intelligence Council had produced two coordinated Intelligence Community Assessments (ICAs) in January 2003 as described above. A redacted copy of both reports can be found as appendices in the Committee's report, *Prewar Intelligence Assessments About Postwar Iraq.*

(U) In the first ICA, entitled *Regional Consequences of Regime Change in Iraq*, the Intelligence Community analyzed the "most important political, economic, and social consequences of

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regime change in Iraq...."[202] The second ICA, *Principal Challenges in Post-Saddam Iraq*, examined "the internal dynamics of Iraq that will frame the challenges for whatever government succeeds the regime of Saddam Husayn."[203]

(U) The two ICA's did not directly assess whether U.S. personnel would be "greeted as liberators," but did address underlying factors that would likely shape Iraqi's views. The Committee's May 2007 summarized the assessments in the two January 2003 reports. These prewar assessments were that:

- Establishing a stable democratic government in postwar Iraq would be a long, difficult and probably turbulent challenge.
- Iraq was a deeply divided society that likely would engage in violent conflict unless an occupying power prevented it.
- The Iraqi government would have to walk a fine line between dismantling the worst aspects of Saddam's police, security, and intelligence forces and retaining the capability to enforce nationwide peace.
- Iraq's large petroleum resources would make economic reconstruction a less difficult challenge than political transformation, but that postwar Iraq would nonetheless face significant economic challenges.
- The new Iraqi government would require significant outside assistance to rebuild Iraq's water and sanitation infrastructure.

**Conclusions**

**(U) Conclusion 16: Statements by President Bush and Vice President Cheney regarding the postwar situation in Iraq, in terms of the political, security, and economic, did not reflect the concerns and uncertainties expressed in the intelligence products.**
There were relatively few intelligence products on this subject prior to January 2003, and senior policymakers did not request them. The Committee recognizes that there were many other sources of information available to policymakers that would inform their views about post-war Iraq. The Committee did not explore these other sources as it is beyond the scope of this report.

[202] National Intelligence Council, *Regional Consequences of Regime Change in Iraq*, January 2003.
[203] National Intelligence Council, *Principal Challenges in Post-Saddam Iraq*, January 2003.

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ADDITIONAL VIEWS OF CHAIRMAN JOHN D. ROCKEFELLER IV

On April 1, 2008, the Senate Select Committee on Intelligence approved on a bipartisan vote of 10-5 the remaining two reports of its investigation into pre-war intelligence on Iraq and related matters.

The first Committee report evaluates whether the public statements of senior United States government officials leading up to the war were substantiated by underlying intelligence information. The second report, building on previous work done by the Committee and the Department of Defense (DoD) Inspector General, further details the intelligence activities of Defense Department policy officials conducted outside the Intelligence Community.

These two reports are part of a second phase of the Iraq investigation authorized unanimously by the Committee on February 12, 2004. In undertaking these additional lines of inquiry, the Committee acted to tell the complete story of how intelligence was not only collected and analyzed prior to the Iraq invasion but how it was publicly used in authoritative statements made by the highest officials of the Bush Administration in furtherance of its policy to overthrow Saddam Hussein.

For three years, the Committee's investigative mandate foundered. Under the direction of the then-majority, the Committee failed to show the same disciplined and objective oversight it demonstrated in producing its July 2004 report on the Intelligence Community's pre-war intelligence assessments on Iraq. Committee Chairman Pat Roberts halted the investigation on the intelligence activities of the Defense Department officials and farmed out the work to the DoD Inspector General in November 2005. The public statements section of the investigation was slow-walked and a draft report was never presented to the Committee membership prior to the change in the Senate majority in 2007, evidently a task too politically sensitive to handle.

Upon assuming the Committee chairmanship, I directed that work be restarted on the remaining sections of the investigation (another report on pre-war assessments on post-war Iraq was approved by the Committee and released in May 2007). Soon thereafter, on February 9, 2007, the DoD Inspector General issued its own report reviewing the activities of DoD policy officials prior to the war.

The Inspector General's report, based on extensive interviews and a thorough review of documents, concluded that the policy office in the Pentagon had expanded its role and mission from formulating policy and had inappropriately disseminated an alternative analysis drawing a link between Iraq and the al-Qaida terrorists who carried out the attacks on September 11th that the Intelligence Community was unable to substantiate. The Committee uncovered this attempt by DoD policy officials to shape and politicize intelligence in order to bolster the Administration's policy of invasion in its July 2004 report.

After the release of the February 2007 DoD Inspector General report, Vice Chairman Christopher "Kit" Bond wrote me urging that the Committee not finish the investigation of the Pentagon policy office it officially authorized three years earlier. As a concession to the Vice Chairman's request, I agreed to not revisit the same events examined in the Inspector General

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report, but rather to restart a portion of the Committee's suspended Pentagon investigation unexamined by the Inspector General: clandestine meetings in Rome and Paris between DoD policy officials and Iranians in 2001 and 2003, facilitated by Manucher Ghorbanifar, the Iranian exile and fabricator implicated in the 1986 Iran-Contra scandal, in which intelligence was collected but kept from the Intelligence Community.

The Committee began examining the circumstances surrounding these meetings in 2003 based on an agreement between Chairman Roberts and me (serving then as Vice Chairman) pursuant to the original terms of reference of the Committee's investigation. We agreed at the time that while these meetings concerned Iran and not Iraq, it was important nevertheless to fully understand how the meetings came to be, what was discussed and proffered at them, and why they were not handled in normal diplomatic or intelligence channels. These were matters of fundamental, statutorily-mandated congressional oversight that the Committee was not at liberty to ignore.

The resulting report is based on interviews of numerous Administration officials, including those Pentagon officials attending the Rome and Paris meetings, and a careful examination of hundreds of pages of documentation, including cable traffic, meeting notes, and an internal DoD review concerning the propriety of the meetings.

Whereas the Committee's 2004 report presented evidence that the DoD policy office attempted to shape the CIA's terrorism analysis in late 2002 and, when it failed, prepared an alternative intelligence analysis denigrating the CIA for not embracing a link between Iraq and the 9/11 terrorist attacks, the most recent report shows that the rogue actions of the office were not isolated.

The Committee's findings paint a disturbing picture of Pentagon policy officials who were distrustful of the Intelligence Community and undertook the collection of sensitive intelligence without coordinating their activities or reporting the information they collected through proper channels. The actions of DoD officials to blindly disregard the red flags over the role played by Mr. Ghorbanifar in these meetings and to wall-off the Intelligence Community from its activities and the information it obtained were improper and demonstrated a fundamental disdain for the Intelligence Community's role in vetting sensitive sources.

In preparing its report on public statements made by U.S. government officials prior to the war, the Committee decided to concentrate its analysis on those statements that were central to the debate in 2002-2003 over the decision to go to war. The Committee identified five major policy speeches made by President George W. Bush, Vice President Richard Cheney, and Secretary of State Colin Powell during this period as the most significant expressions of how the Bush Administration communicated intelligence judgments to the American people, the United States Congress, and the international community. Additional statements made by senior Administration officials during this time frame containing assertions not included in the five major policy speeches were examined as well.

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The Committee decided not to consider public statements made prior to the summer of 2002 in its review or those made by lower level Executive Branch officials. They were not deemed to be as central to the lead-up to war in Iraq.

Statements made by members of Congress also were not evaluated. A bipartisan majority of the Committee agreed that these statements do not carry the same weight of authority as statements made by the President and others in the Executive Branch who are charged with representing the views of the U.S. government in a State of the Union Address viewed by 50 million Americans or in a speech before the United Nations. In addition, members of Congress did not have the same ready access to intelligence as senior Executive Branch policymakers. As the Committee's 2004 Iraq report highlights, it took requests by members of the Committee to the Director of Central Intelligence George Tenet in September 2002 for the Intelligence Community to produce its National Intelligence Estimate (NIE) on Iraq's weapons of mass destruction programs. The hastily produced NIE was not published until October 2002, mere days before Congress was scheduled to vote on the resolution to authorize the use of force in Iraq. By this time, the Administration had made repeated public assertions regarding Iraq's weapons of mass destruction and links to terrorism as a predicate for the pre-emptive use of military force that would soon follow.

The Committee carefully examined these public statements against the intelligence products distributed by the Intelligence Community at the time of the statement. The report's conclusions highlight which statements were substantiated by the intelligence reporting and which statements were not. The Committee's findings are fair and objective. In those instances where a statement is not substantiated by the intelligence, the Committee renders no judgment as to why.

As the report details, Administration statements prior to the war often reflected the reporting of the Intelligence Community, even when the judgments underlying the reporting were based on flawed analysis or false information. However, senior Administration officials repeatedly spoke in declarative and unequivocal terms about Iraq's weapons of mass destruction programs and support for terrorists. These declarative statements were not substantiated. In the push to rally public support for the invasion of Iraq, Administration officials often failed to accurately portray what was known, what was not known, and what was suspected about Iraq and the threat it represented to our national security.

The report documents significant instances in which the Administration went beyond what the Intelligence Community knew or believed in making public claims, most notably on the false assertion that Iraq and al-Qaida had an operational partnership and joint involvement in carrying out the attacks of September 11th. The President and his advisors undertook a relentless public campaign in the aftermath of the attacks to use the war against al-Qaida as a justification for overthrowing Saddam Hussein. Representing to the American people that the two had an operational partnership and posed a single, indistinguishable threat was fundamentally misleading and led the Nation to war on false premises.

The Committee also found instances where a public statement selectively used that intelligence information which supported a particular policy viewpoint while ignoring

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contradictory information that weakened the position. While on its face, a statement may have been accurate, it nevertheless presented a slanted picture to those who were unaware of the hidden intelligence.

The Administration's misuse of intelligence prior to the war was aided by the selective declassification of intelligence reporting. The Executive Branch historically exercises the prerogative to classify information in order to protect national security and, unlike Congress, it can declassify information unilaterally and with ease. The Administration exploited this declassification authority in the lead up to the war and disclosed intelligence at a time and in a manner of its choosing with impunity, knowing that others attempting to disclose additional details that might provide balance or improve accuracy would be prevented from doing so under the threat of prosecution. This unlevel playing field allowed senior officials to disclose and discuss sensitive intelligence reports when it supported the Administration's policy objectives and keep out of the public discourse information which did not.

The canon of the Committee's Iraq investigation – a series of six reports issued over a four-year period – demonstrates why congressional oversight is essential in evaluating America's intelligence collection and analytic activities.

During the course of its investigation, the Committee uncovered that the October 2002 National Intelligence Estimate on Iraq's alleged weapons of mass destruction was based on stale, fragmentary, and speculative intelligence reports and replete with unsupported judgments. Troubling incidents were reported in which internal dissent and warnings about the veracity of intelligence on Iraq were ignored in the rush to war.

The Committee's investigation also revealed how the Administration policymakers applied pressure on intelligence analysts prior to the war to support a link between Iraq and those terrorists responsible for the attacks of September 11th that did not exist.

Our investigation detailed how the Iraqi National Congress attempted to influence United States policy on Iraq by providing false information through defectors directed at convincing the United States that Iraq possessed weapons of mass destruction and had links to terrorists, and how this false information was embraced despite warnings of fabrication.

The Committee's investigation also documented for the public how the Administration ignored the pre-war judgments of the Intelligence Community that the invasion of Iraq would destabilize security in-country and provide al-Qaida with an opportunity to exploit the situation and increase attacks against United States forces during and after the war. After five years and the loss of over 4,000 American lives, these ignored judgments were tragically prescient.

Overall, the findings and conclusions of the Committee's Iraq investigation were an important catalyst in bringing about subsequent legislative and administrative reforms of the Intelligence Community designed to learn from these painful lessons of the past.

Finally, I am disappointed that Vice Chairman Bond was unable to support the issuance of these two remaining reports. From when the initial drafts of both reports were presented to

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Committee members on January 15, 2008, to their adoption two and a half months later, every effort was made to accommodate changes proposed by all members. In the end, the Vice Chairman was the only Committee member to file amendments seeking further revision to the report. Of the over 170 amendments he filed, the Committee was able to accept or resolve more than half. By the time the reports were adopted on April 1st, they reflected over 300 changes made at the request of the Vice Chairman. The Vice Chairman's remaining amendments were requested changes that would have gutted the reports' conclusions, changed the factual underpinnings of the investigation, and significantly delayed completion of the long-overdue reports. When the Vice Chairman repeatedly refused my request at the April 1st meeting that he call up those remaining amendments he wanted considered and voted on, the Committee, on a bipartisan basis, voted 10-5 to approve and release the final installments of the Committee's investigation.

CORRECTION SUBMITTED BY CHAIRMAN JOHN D. ROCKEFELLER IV

[redacted] An error appears on page 8 of the report on public statements. An additional sentence should be included in the paragraph discussing the views of the National Ground Intelligence Center, so that it reads: "A later memo from State/INR said that 'the IAEA and [redacted] pertinent technical expert has concluded independently that the aluminum tubes are not intended for Iraq's nuclear program and are consistent with rocket casings...' The memo also stated that 'High-grade aluminum is used for tactical rockets by a number of countries. Examples identified by DOE...include the United States, Russia (905 x 80mm rockets), and apparently Switzerland and Italy, whose 81mm rocket design is assessed to have been reverse-engineered for the Nasser MLR system', with the note that 'DOE and DoD's National Ground Intelligence Center (NGIC) concur on this assessment, though NGIC does not share most of the other DOE views on tactical rockets.'"

(U) This correction was not made in the body of the report due to an objection by the Vice Chairman.

JOHN D. ROCKEFELLER IV

### ADDITIONAL VIEWS OF SENATOR DIANNE FEINSTEIN

I applaud the completion of the Committee's Phase II investigations.

Since the Committee's first report in July 2004, we have known that the prewar intelligence on Iraq was both bad and wrong – it was the result of flawed tradecraft and produced the inaccurate belief that Saddam Hussein had weapons of mass destruction. It has been four years since the Committee began the second phase of its review. The results are now in. Even though the intelligence before the war supported inaccurate statements, this Administration distorted the intelligence in order to build its case to go to war. The Executive Branch released only those findings that supported the argument, did not relay uncertainties, and at times made statements beyond what the intelligence supported.

I am pleased that these reports have been completed and released for the public's review. We can now turn our full attention to the present and the future, and making sure the mistakes of the past are not repeated.

DIANNE FEINSTEIN

[redacted] Russ D Feingold

**ADDITIONAL VIEWS OF SENATOR FEINGOLD**

The Administration, and particularly President Bush and Vice President Cheney, made repeated assertions about the threat posed by Saddam Hussein that were not supported by the intelligence available at the time. Those assertions overstated the nature and urgency of the threat, as described in the intelligence, ignored ongoing disagreements and uncertainty within the Intelligence Community, and, at times, outright contradicted intelligence assessments. Together, the statements sought to make the case for a war in Iraq by convincing the American people, first, that Saddam had, might have, or was on the verge of obtaining a nuclear weapon, and, second, that Saddam had a relationship with Al Qaeda and would provide Al Qaeda with weapons of mass destruction for the purpose of attacking the United States.

Even the deeply flawed October 2002 National Intelligence Estimate (NIE) did not support the claims made by the President and the Vice President regarding an Iraqi nuclear program. That NIE assessed that Iraq did not have a nuclear weapon or sufficient material to make one, and that without sufficient fissile material acquired from abroad, Iraq probably would not be able to make a weapon until 2007 or 2009. Yet the President made the following statements: "[Saddam] possesses the world's most dangerous weapons" (March 22, 2002); "[w]e don't know whether or not [Saddam] has a nuclear weapon" (December 31, 2002); and, of course, "[f]acing clear evidence of peril, we cannot wait for the final proof – the smoking gun – that could come in the form of a mushroom cloud" (October 7, 2002). Meanwhile, Vice President Cheney insisted that assessments related to Iraq's nuclear program that were disputed within the Intelligence Community were known "with absolute certainty" (September 8, 2002) and through "irrefutable evidence" (September 20, 2002). And, on the eve of war, after the IAEA had reported that its inspectors had found "no evidence or plausible indication of the revival of a nuclear weapons program in Iraq, the Vice President asserted, "[w]e believe [Saddam] has, in fact, reconstituted nuclear weapons" (March 16, 2003).

Administration officials' claims of a relationship between Iraq and al Qaeda were even more outlandish. Before the war, the Central Intelligence Agency assessed that "Saddam has viewed Islamic extremists operating inside Iraq as a threat," that "Saddam Hussein and Usama bin Laden are far from being natural partners," and that assessments about Iraqi links to al Qaeda rested on "a body of fragmented, conflicting reporting from sources of varying reliability." Moreover, the Intelligence Community consistently assessed that Saddam's use of weapons of mass destruction against the United States rested on his being "sufficiently desperate" in the face of a U.S. attack and his possible desire for a "last chance at vengeance." Yet the President not only repeatedly suggested an operational relationship between Iraq and al Qaeda, but asserted that Saddam would provide weapons of mass destruction to al Qaeda for an unprovoked attack against the United States: "you can't distinguish between al Qaeda and Saddam when you talk about the war on terror" (September 25, 2002); "[e]ach passing day could be the one on which the Iraqi regime gives anthrax or VX – nerve gas – or some day a nuclear weapon to a terrorist ally" (September 26, 2002); "[Saddam] is a man who, in my judgment, would like to use al Qaeda as a forward army" (October 14, 2002); "[Saddam] is a threat because he is dealing with al Qaeda… [A] true threat facing our country is that an al Qaeda-type network trained and armed by Saddam could attack American and not leave one fingerprint" (November 7, 2002); and "[t]he danger is clear: using chemical, biological or, one day, nuclear weapons obtained with the help

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of Iraq, the terrorists could fulfill their stated ambitions and kill thousands or hundreds of thousands of innocent people in our country or any other" (March 17, 2002). Yet, as the Committee report has concluded, "[s]tatements by the President and Vice President indicating that Saddam Hussein was prepared to give weapons of mass destruction to terrorist groups against the United States were contradicted by available intelligence information." Further, "[s]tatements and implications by the President and the Secretary of State suggesting that Iraq and al Qaeda had a partnership, or that Iraq had provided al Qaeda with weapons training, were not substantiated by the intelligence." Even statements that Saddam harbored al Qaeda, such as the President's assertion that he "aids and protects terrorists, including members of al Qaeda" (January 28, 2003) were not supported by the intelligence available at the time. As the CIA acknowledged, "we lack positive indications that Baghdad is complicit" in the presence of operatives associated with al Qaeda in Iraq in 2002.

These and other assertions that were contradicted by the available intelligence, including predictions of a smooth transition to a stable democracy, were intended to drive the country into a war that has cost thousands of American lives and hundreds of billions of dollars, visited untold misery on the Iraqi people, and severely damaged our national security. Administration officials used the terrorist attacks of September 11, 2001 to justify a war that has not only been waged in a country that had no connection to the attacks, but has seriously damaged our ability to fight al Qaeda. In that respect, the President's statement, on October 2, 2002, that "the Iraqi regime is a threat of unique urgency" was perhaps most inaccurate of all. In October 2002, and still today, the threat of unique urgency facing the United States does not come from Iraq, but from the Afghanistan/Pakistan safe haven and global capabilities of al Qaeda and its affiliates.

RUSSELL D. FEINGOLD

[redacted]

Olympia Snowe [redacted] Chuck H.

**ADDITIONAL VIEWS OF SENATORS HAGEL AND SNOWE**

On February 12, 2004, the Chairman and Vice Chairman of the Senate Select Committee on Intelligence issued a joint statement regarding the Committee's Review of Pre-War Intelligence in Iraq. Specifically, the Chairman and Vice Chairman announced that the Committee had "unanimously agreed to refine the terms of reference of the Committee's ongoing inquiry into pre war intelligence with regard to Iraq." The Chairman expressly stated that the "resolution adopted unanimously today illustrates the commitment of all members to a thorough review, to learning the necessary lessons from our experience with Iraq, and to ensuring that our armed forces and policymakers benefit from the best and most reliable intelligence that can be collected. I believe that the report which we are currently reviewing will have a profound impact on the future of our intelligence Community." We concurred completely.

We also believe that the process by which the Committee drafted and approved the reports could have been significantly improved. The Committee took more than four years to review information of great import. The process was marked by partisan quarrels; however, we believe that every member had sufficient time to review and comment on the respective reports. In fact, of the 165 amendments filed to these reports, over 50% were resolved or withdrawn. Unfortunately, members never had an opportunity to vote up or down on the remaining amendments. We endorse the reports as the final chapter of the Committee's inquiry into prewar intelligence with regard to Iraq. However, given the opportunity to vote, we also would have likely supported some of the amendments that had been filed, which would have improved the final product.

On balance, these reports contain critical information that should unequivocally be publicly released, enabling the public to formulate their own conclusions. These reports in no way preclude the committee from undertaking additional inquiries into the prewar intelligence with regard to Iraq. These reports simply bring closure to the Committee's review.

**Intelligence Activities Relating to Iraq Conducted by the Policy Counterterrorism Evaluation Group and the Office of Special Plans within the Office of the Under Secretary of Defense for Policy**

The February 12, 2004 terms of reference of the Committee's inquiry mandated that the Committee review "any intelligence activities relating to Iraq conducted by the Policy Counterterrorism Evaluation Group (PCTEG) and the Office of Special Plans within the Office of the Under Secretary of Defense for Policy," (OUSDP) as well as "other issues we mutually identify in the course of the Committee's review."

The Committee began its review of intelligence activities by the offices reporting to the Under Secretary of Defense for Policy in 2004, but the effort was suspended in September 2005, when the Committee requested the Department of Defense Inspector General (DoD IG) to review whether the Office of Special Plans, which reported to the OUSDP, "at any time, conducted unauthorized, unlawful or inappropriate intelligence activities."

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The DoD IG reviewed whether personnel assigned to the PCTEG, OSP or OUSDP had conducted unauthorized, unlawful or inappropriate intelligence activities from September 2001 through June 2003, completing its report in February 2007.

The IG report concluded that "the Office of the Under Secretary of Defense for Policy developed, produced, and then disseminated alternative intelligence assessments on the Iraq and al-Qaida relationship, which included some conclusions that were inconsistent with the consensus of the Intelligence Community, to senior decision makers. While such actions were not illegal or unauthorized, the actions were...inappropriate. [...] This condition occurred because of an expanded role and mission of the Office of the Under Secretary of Defense for Policy from policy formulation to alternative intelligence analysis and dissemination. As a result, the Office of the Under Secretary of Defense for Policy did not provide "the most accurate analysis of intelligence" to senior decision makers."

We endorse the DoD IG's finding that the OUSDP personnel's actions were inappropriate, and, given the thorough work completed by the DoD IG on this issue, we do not believe it would serve the public interest to go over the same ground again. Based on the results of the DoD IG's review, the Committee decided to examine intelligence collection activities within the OUSDP, which had not been included in the DoD IG report. Both reviews demonstrate that intelligence activities undertaken by the United States Government should rely on the professional Intelligence Community. We believe it is important for the American public to be aware of the results of this inquiry.

**Whether Public Statements regarding Iraq by U.S. Government Officials Were Substantiated by Intelligence Information**

The Committee unanimously agreed to evaluate "whether public statements and reports and testimony regarding Iraq by U.S. Government officials made between the Gulf War period and the commencement of Operation Iraqi Freedom were substantiated by intelligence information." According to the Committee report, the "Committee decided to concentrate its analysis on the statements that were central to the nation's decision to go to war," and "specifically, the committee chose to review five major policy speeches by key Administration officials regarding the threats posed by Iraq, Iraqi weapons of mass destruction programs, Iraqi ties to terrorist groups, and possible consequences of a US invasion of Iraq." No amendments were filed to either strike or revise this language.

The Committee report continued stating that the "speeches are the best representations of how the Bush Administration communicated intelligence analysis to the Congress, the American people, and the international community" and that the speeches "are also fairly comprehensive in scope, so evaluations about whether a particular statement in a speech was substantiated can be extrapolated to cover similar statements made at similar times." In order to conduct this review "the Committee assembled hundreds of intelligence reports produced prior to March 19, 2003 in an effort to understand the state of intelligence analysis at the time of various speeches and statements."

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Then, importantly, the report acknowledges that the "Committee is fully aware that officials may have had multiple credible sources of information upon to which to base statements, but has not attempted to document or analyze source materials other than intelligence, so that is beyond the scope of this report." The report focuses on major coordinated inter-agency intelligence reports and assessments.

The Committee deemed that these reports were the most "authoritative" and represented the "full Intelligence Community position." The Committee elected to not include "less formal communications between intelligence agencies and other parts of the Executive Branch" or reports "from the field." Although we have repeatedly advocated for releasing as much information to the public as possible, we agreed that in this context, basing the report on major coordinated interagency intelligence reports and assessments, which represent the collective informed views of the Intelligence Community, was appropriate.

Although we would have likely supported amendments expanding the scope if afforded the opportunity to vote, the scope and methodology was consistent with the unanimously agreed to charter, and, therefore, we supported it. In the event that assessments were referenced in the report and not included or cited, we would have clearly supported their inclusion. However, these assessments arguably would not have had a profound impact on the report or significantly affected the overall conclusions; they would have only provided context.

The report accomplished its primary objective, unanimously agreed to by the committee: to evaluate "whether public statements and reports and testimony regarding Iraq by U.S. Government officials made between the Gulf War period and the commencement of Operation Iraqi Freedom were substantiated by intelligence information."

CHUCK HAGEL
OLYMPIA J. SNOWE

Kit Bond [redacted] Saxby Chambliss

**Minority Views of Vice Chairman Bond and Senators Chambliss, Hatch, and Burr***

Orrin G. Hatch

This majority-only written report by the Senate Intelligence Committee is a great disappointment to us and an unfortunate commentary on the political nature of intelligence oversight in the Congress today. We regret that at a time when the Committee should be focusing its full attention on improving our intelligence community, closing the gaps in critical intelligence, and making our country safer, that the Committee finds itself again consumed with political gamesmanship. Although we asked from the beginning of this investigation to be included in it, we were cut out; although we asked that the Members of the Committee produce the conclusions on this report, two majority staff were assigned to the task; and although we had over 50 amendments on the table at our Committee meeting on this report, we were not allowed to offer any of them. We have rarely seen such a poorly handled congressional investigation, and we believe the facts detailed below speak for themselves.

*Early History*

In late 2003 the Democrats first proposed that the Committee expand its inquiry of intelligence on Iraq into how administration policymakers "used" intelligence; frankly, we were not sure what they meant. At the time, it was already becoming clear to the Committee that the intelligence community's performance in its estimate of Iraq's weapons of mass destruction capabilities had been a serious failure. Having heard many of the statements those policymakers had made, it seemed obvious to us that they "used" the intelligence on Iraq the same way policymakers in Congress at the time and policymakers in previous administrations had: they read it, made decisions based on what they read (as well as other available information), and they spoke to the American public about their policies and decisions. Once the Committee's inquiry began to reveal that analysts were not "pressured" by the administration to assess that Iraq had weapons of mass destruction and that, in fact, the intelligence itself was wrong, it appeared that the Democrats wanted to add a more subjective element into the investigation—how policymakers "used" intelligence.

The reason for this initiative became clear in November 2003 when the press exposed a memo which outlined the "plan" by Committee Democrats to explore "vague notions of use" in order to make the greatest political gain from the Committee's Iraq investigation. They intended to "pull the majority along as far as we can on issues that may lead to new disclosures regarding improper or questionable conduct by administration officials." The memo said that "we don't know what we will find but our prospects for getting access we seek is far greater when we have the backing of the majority." The memo also noted that "we can verbally mention some of the intriguing leads we are pursuing"—presumably to the press and in violation of the Committee rules.

In spite of this disturbing revelation that the Democrats were seeking to politicize deliberately the national security oversight function of the Congress, in an effort toward bipartisan compromise, in February 2004 the Committee agreed to examine "whether public

* I concur with the Vice Chairman's views on the substance of the report as well as the Minority's amendments. I am unable to comment on any Phase I or Phase II activities that preceded my membership on this Committee.

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statements and reports and testimony regarding Iraq by U.S. Government officials made between the Gulf War period and the commencement of Operation Iraqi Freedom were substantiated by intelligence information" as part of a second phase of the Iraq inquiry. Given what we had already learned, we warned that this could quickly devolve into an unfortunate use of the Committee's time and resources, but we were willing to agree to the compromise nonetheless, confident that any *fair* inquiry would show clearly that the statements of administration officials were substantiated by the intelligence available to them at the time, intelligence that, as described in the Committee's unanimous Phase I report, was flawed.

Unfortunately, the report released today confirmed our early suspicions. The Phase II effort has indeed resulted in a partisan exercise and requests made by the Democrats of the then-Republican Committee leadership from 2004 to 2006 for the inquiry itself and for unnecessary interviews and documents were clearly intended as roadblocks to prevent the inquiry's completion and to allow bogus charges of "obstruction" intended to help the Democrats' political goals.

Ironically, but not surprisingly, even when the Democrats gained control of the Committee and were in a position to take their best shot at fashioning a purely partisan inquiry—specifically by instructing only two majority staffers to conduct the review, cutting out the minority entirely, twisting the statements of the policymakers they reviewed, and cherry picking the intelligence that helped best make their case—the reports essentially validate what we have been saying all along: that policymakers' statements were substantiated by the intelligence. As the Committee's Phase I report showed, it was the intelligence that was faulty. In the cases in which the majority concluded that statements were not substantiated by intelligence or did not convey fully the intelligence community's analysis, it is clear that either the words of the policymakers in question or the body of intelligence available at the time were distorted in order to make these false charges. We have addressed each of those cases in the attached amendments in Appendix A (see amendments 42, 68, 85, 86, 96, 119, 120, and 136)

With the partisan elements of this inquiry now fully exposed, we hope that others will see why we are so disappointed that Committee time and resources have been wasted at this critical juncture in our nation's history. We have not had an Intelligence Authorization Bill become law in this Congress or the last Congress, we have not had a Foreign Intelligence Surveillance Act (FISA) reform bill become law in this Congress—two badly needed bills—both to improve the functioning of the intelligence community and protect the nation. Yet, we have been forced to waste countless man-hours to show what we and the American people already knew four years ago, that policymakers' statements turned out to be wrong after the war because the statements were based on flawed intelligence. The Committee's Phase I report, which investigated that intelligence failure and explained how it happened, was a judicious and valuable act of intelligence oversight. Distorting intelligence and misleading the public, as the current majority report does, is not.

We are also disappointed that in a zealous, but ultimately failed, attempt to expose alleged "distortions" by the administration, the majority chose to cover up and distort information themselves. Specifically, the majority report excludes from consideration all of the statements made by Members of Congress and the previous administration that were submitted

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for review by the Republican Members. It also excludes relevant intelligence information requested for inclusion by Republican Members including instances in which the Committee knew that specific policymakers' statements were fact-checked and approved by intelligence community agencies. It treats policymakers unfairly by distorting their words and refusing those individuals the opportunity to respond to what has been alleged about their statements. Because these issues are our most serious concerns about this flawed majority report, we address each in more detail below.

<u>Cover-up for Democrats</u>

Following the Committee's agreement on February 12, 2004, to examine "whether public statements and reports and testimony regarding Iraq by U.S. Government officials made between the Gulf War period and the commencement of Operation Iraqi Freedom were substantiated by intelligence information" the Chairman and Vice Chairman each provided a list of statements their respective Members wanted examined by the Committee staff. In the reports released today, only those statements submitted by the Democrats were reviewed.

The Republican Members of the Committee submitted approximately 100 statements for review. These were statements made by officials in the previous administration and Members of Congress. Many of our Members believed it was relevant and important to include those statements, particularly from Democrats in Congress, to show that during the debate leading up to and during the authorization of the war in Iraq and during previous efforts to use force in Iraq, Members of both parties with access to intelligence information, not just the Republican administration, made very similar statements about Iraq's weapons of mass destruction capabilities and links to terrorism. In our opinion, the statements from most policymakers, whether or not they supported the decision to go to war in Iraq, were similar because everyone saw virtually the same intelligence and used that same intelligence in speeches to explain their own decision-making.

*Nuclear*

In the nuclear area, for example, the majority report's first conclusion notes that policymakers' statements about Iraq's nuclear activities were substantiated by intelligence, but the majority concludes that some statements did not convey disagreements that existed within the intelligence community. Many Democrats in Congress also discussed Iraq's nuclear efforts during the Iraq war debate and in other venues and similarly did not describe disagreements within the intelligence community.

For example, all of the following statements discussed Iraq's efforts to develop nuclear weapons, but none of them noted that there was a dissent from one of the agencies within the intelligence community. Conversely, the report is critical of administration officials who did not discuss this dissent even though the dissent had not even been published by that agency at the point the statements by the administration officials were made. The majority apparently believes some policymakers should be mind-readers. All of the following statements made by Democrats in Congress were made after the publication of the Iraq WMD NIE in which the nuclear alternative judgment was published, yet none of them was allowed to be included in the report.

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- In the four years since the inspectors left, intelligence reports show that Saddam Hussein has worked to rebuild his chemical and biological weapons stock, his missile delivery capability, and his nuclear program. He has also given aid, comfort and sanctuary to terrorists, including al-Qa'ida members. – **Senator Hillary Clinton**, Congressional Record, October 10, 2002.

- There is unmistakable evidence that Saddam Hussein is working aggressively to develop nuclear weapons and will likely have nuclear weapons within the next 5 years. He could have it earlier if he is able to obtain fissile materials on the outside market, which is possible—difficult but possible. We also should remember we have always underestimated the progress that Saddam Hussein has been able to make in the development of weapons of mass destruction. **Senator John D. Rockefeller IV**, Congressional Record, October 10, 2002.

- Saddam Hussein is an evil man, a dictator who oppresses his people and flouts the mandate of the international community. While this behavior is reprehensible, it is Hussein's vigorous pursuit of biological, chemical and nuclear weapons, and his present and potential future support for terrorist acts and organizations, that make him a terrible danger to the people to the United States. **Senator Charles Schumer**, Congressional Record, October 10, 2002

- There is no question that Iraq possesses biological and chemical weapons and that he seeks to acquire additional weapons of mass destruction, including nuclear weapons. That is not in debate. **Senator Christopher Dodd**, Congressional Record, October 9, 2002.

- We know that he has chemical and biological weapons. He has already used them against his neighbors and his own people, and is trying to build more. We know that he is doing everything he can to build nuclear weapons, and we know that each day he gets closer to achieving that goal. **Senator John Edwards,** Congressional Record, October 10, 2002.

- Almost no one disagrees with these basic facts: that Saddam Hussein is a tyrant and a menace; that he has weapons of mass destruction and that he is doing everything in his power to get nuclear weapons; that he has supported terrorists; that he is a grave threat to the region, to vital allies like Israel, and to the United States; and that he is thwarting the will of the international community and undermining the United Nations' credibility. **Senator John Edwards,** Congressional Record, October 10, 2002

The following statement from Senator John Kerry went a step further, claiming that "all U.S. intelligence experts agree that Iraq is seeking nuclear weapons." In fact, not "all" intelligence agencies assessed that Iraq was seeking nuclear weapons; as noted in the majority report, one agency considered the evidence inadequate to reach such a judgment.

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- According to the CIA's report, all U.S. intelligence experts agree that Iraq is seeking nuclear weapons. There is little question that Saddam Hussein wants to develop nuclear weapons. The more difficult question to answer is when Iraq could actually achieve this goal. That depends on is its ability to acquire weapons-grade fissile material. If Iraq could acquire this material from abroad, the CIA estimates that it could have a nuclear weapon within 1 year. **Senator John Kerry**, October 9, 2002.

This comment from Senator Durbin, made nearly a year earlier, actually indicated that Saddam Hussein had "perhaps even nuclear weapons" at his disposal. At no time did the intelligence community assess that Iraq perhaps had nuclear weapons.

- When you look at what Saddam Hussein has at his disposal, in terms of chemical, biological, and perhaps even nuclear weapons, we cannot ignore the threat that he poses to the region and the fact that he has fomented terrorism throughout his reign. **Senator Dick Durbin**, December 21, 2001, Larry King Live.

Why were none of these statements considered worthy of analysis by the majority's review staff, particularly those made by Senators Durbin, Edwards, and Rockefeller, who were all members of the Senate Intelligence Committee at that time, and by Senator Clinton, who has publicly acknowledged being briefed on the NIE?

*UAVs*

Regarding Iraq's UAV capability, the report notes that some administration statements did not convey disagreements or evolving views within the intelligence community about whether Iraq intended to use UAVs for chemical or biological weapons delivery. The report, however, failed to analyze statements made by Democrats like:

- Saddam's existing biological and chemical weapons capabilities pose real threats to America today, tomorrow. Saddam has used chemical weapons before, both against Iraq's enemies and against his own people. He is working to develop delivery systems like missiles and unmanned aerial vehicles that could bring these deadly weapons against U.S. forces and U.S. facilities in the Middle East. He could make these weapons available to many terrorist groups, third parties, which have contact with his government. Those groups, in turn, could bring those weapons into the United States and unleash a devastating attack against our citizens. I fear that greatly. **Senator John D. Rockefeller IV**, Congressional Record, October 10, 2002.

- In addition, Iraq is developing unmanned aerial vehicles UAVs, capable of delivering chemical and biological warfare agents, which could threaten Iraq's neighbors as well as American forces in the Persian Gulf. **Senator John Kerry**, Congressional Record, October 9, 2002.

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*"Intent"*

In a section titled "Intent" the majority report includes statements from several administration officials which discussed their concerns about what Saddam Hussein could do with his weapons of mass destruction considering his disdain for the United States and his long association with terrorist groups. We believe that these statements were not about Iraq's "intent" at all, as the majority report says, but were explaining that with a lack of information about Iraq's intent, these policymakers were concerned about Iraq's capabilities. We note that many Democrats also expressed the same concerns about the threat Iraq posed or might have posed to the United States due to his weapons of mass destruction capabilities, connections to terrorists, or both in speeches that were not analyzed in the majority report:

- I have come to the inescapable conclusion that the threat posed to America by Saddam's weapons of mass destruction is so serious that despite the risks and we should not minimize the risks we must authorize the President to take the necessary steps to deal with that threat. There has been some debate over how "imminent" a threat Iraq poses. I do believe Iraq poses an imminent threat. I also believe after September 11, that question is increasingly outdated. It is in the nature of these weapons that he has and the way they are targeted against civilian populations, that documented capability and demonstrated intent may be the only warning we get. To insist on further evidence could put some of our fellow Americans at risk. Can we afford to take that chance? I do not think we can. **Senator John D. Rockefeller IV**, Congressional Record, October 10, 2002.

- Is [Saddam Hussein] a greater threat than he was in 1991? He surely is. There's different ways of launching scuds and all kinds that go faster, farther. There is no question on that... And if [our allies] are not there for us, does that mean in this debate, precedent-based, historically-based, that we sort of sit and take it, or are we going to end up basically being unilateral anyway because we cannot have our children smallpoxed. **Senator John D. Rockefeller IV**, Congressional Record, September 25, 2002.

- When I vote to give the President of the United States the authority to use force, if necessary, to disarm Saddam Hussein because I believe that a deadly arsenal of weapons of mass destruction in his hands is a threat, and a grave threat to our security and that of our allies in the Persian Gulf region. **Senator John Kerry**, Congressional Record, October 9, 2002.

- I believe that Saddam Hussein's Iraqi regime represents a clear threat to the United States, to our allies, to our interests around the world, and to the values of freedom and democracy we hold dear....Thousands of terrorist operatives around the world would pay anything to get their hands on Saddam's arsenal, and there is every possibility that he could turn his weapons over to these terrorists...we can hardly ignore the terrorist threat, and the serious danger that Saddam would allow his arsenal to be used in aid of terror. **Senator John Edwards**, Congressional Record, September 12, 2002.

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- When I consider that Hussein could either use or give to terrorists weapons of mass destruction biological, chemical or nuclear and that he might just be mad enough to do it I find, after careful research, the answer to my question: we cannot afford to leave him alone over the next 5 or even 3 years. **Senator Charles Schumer**, Congressional Record, October 10, 2002

- If you allow someone like Saddam Hussein to get nuclear weapons, ballistic missiles, chemical weapons, biological weapons, how many people is he going to kill with such weapons? He's already demonstrated a willingness to use the weapons. He poison-gassed his own people. He used poison gas and other weapons of mass destruction against his neighbors. This man has no compunction about killing lots and lots of people. So this is a way to save lives and to save the stability and peace of a region of the world that is important to the peace and security of the entire world. **Vice President Al Gore**, Address to the Nation, December 16, 1998.

- Our strategic objective is to contain Saddam Hussein and curtail his ability to produce the most deadly weapons known to mankind-weapons that he has unleashed with chilling alacrity against his own people. Left unchecked, Saddam Hussein would in short order be in a position to threaten and blackmail our regional allies, our troops, and, indeed, our nation. **Senator Joe Biden**, Congressional Record, February 12, 1998.

- Saddam Hussein, with one nuclear weapon, would be far more dangerous than the Soviet Union with 20,000. The difference is, they would not use [their weapons]. They were not suicidal. He would. **Senator Carl Levin**, Congressional Record, October 9, 1998

- With the peace of the region and, and in fact, much of the world at risk, we cannot allow Iraq to continue its maneuvers designed to protect such a dangerous buildup of biological, chemical and nuclear weapons. **Senator John D. Rockefeller IV**, Congressional Record, December 16, 1998.

- It is not possible to overstate the ominous implications for the Middle East if Saddam were to develop and successfully militarize and deploy potent biological weapons. We can all imagine the consequences. Extremely small quantities of several known biological weapons have the capability to exterminate the entire population of cities the size of Tel Aviv or Jerusalem. These could be delivered by ballistic missile, but they also could be delivered by much more pedestrian means; aerosol applicators on commercial trucks easily could suffice. If Saddam were to develop and then deploy usable atomic weapons, the same holds true. **Senator John Kerry**, Congressional Record, November 9, 1997

This is only a sampling of the approximately 100 statements submitted by Republican Members of this Committee for review and which we repeatedly requested be included in the

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report as agreed previously by the Committee Members. This request was ignored by the majority during two iterations of comments on the report drafts and a motion to include such statements, offered by the Vice-Chairman at the Committee's business meeting, was denied a hearing by the Chairman.

Cherry-Picking Intelligence

We have several concerns about the intelligence information the majority chose to include, and chose to ignore, in its report.

First, the majority chose to include only "finished disseminated intelligence" for comparison with policymakers' statements. This is not only a departure from the Committee's agreed upon terms of reference, it is unfair to policymakers whom we know had access to far more than just published intelligence assessments.

For example, in preparation for Secretary Powell's statement before the UN on February 5, 2003, the CIA provided an intelligence report called a TD (telegraphic dissemination) for use in the speech. In spite of the fact that the CIA informed the Committee about this in early 2004 and that the information was included in the Committee's first Iraq report published nearly four years ago, the majority refused to include, or even consider, the TD in its majority report. Instead the majority report included an intelligence assessment published *after* the Secretary's speech and noted the existence of "operational intelligence traffic." Any intelligence officer who has been on the job more than a week knows that a TD is an intelligence report, not "operational traffic." Moreover, after refusing our request to include the TD, incorrectly arguing that it was "operational," the majority drafters included several actual operational cables of their choosing in another section of the report. Worse, these were operational cables which the Committee knows were not finished intelligence reports for policymakers and were not given to any administration officials; yet the much more widely disseminated TD, specifically provided to Secretary Powell for use in his speech, was not included in the majority report.

Even worse, excluded from sections of the report which specifically analyze the President's statements, is the President's Summary of the NIE, a summary document prepared for and presented to the President. This is most disturbing since in two important cases—regarding reconstitution of Iraq's nuclear program and Iraq's intent to use its small UAVs for biological weapons delivery—the judgments and dissents were presented differently than in the NIE's key judgments and main text. In fact, in the case of Iraq's UAVs, the dissent was not included in the President's summary at all.

Second, the report excludes other information relevant to any fair inquiry of whether policymakers' statements were substantiated by intelligence. For example, the Committee obtained information related to the coordination, declassification, and fact-checking of the President's Cincinnati speech with the CIA, relevant portions of which we requested be included in the report. Specifically, a handwritten note by a CIA officer at the bottom of one of the drafts to then-DCI Tenet said that the CIA terrorism analyst had "read all the terrorism paragraphs and said it was <u>all okay</u>" (emphasis original.) We believed it was only fair to let the public know that the CIA checked the President's speech and said that all of the terrorism paragraphs were

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determined by CIA analysts to be "all okay." Apparently the majority did not think this was something the public needed to know since they denied our request to include it and did not allow a vote on the amendment offered to fix this shortcoming. Why do the Democrats want to hide the fact that the CIA cleared the President's speech?

As another example, the majority report analyzes Secretary Powell's UN speech, but does not explain that this speech was not only checked and rechecked by the intelligence community to ensure that the speech was well supported by the available intelligence, but also that the first draft of the speech was actually written by the CIA. Notably, the report fails to mention this. In some cases the majority report actually claims that Secretary Powell's statements in this speech were not substantiated by intelligence, even though the intelligence was in the original draft written by the CIA. We are at a loss to explain how the majority can believe that a speech drafted by the CIA and then checked and rechecked by the intelligence community to ensure that it was strongly supported by the available intelligence could in any way be characterized as unsubstantiated by intelligence at that time.

Third, in several cases, the report compares policymaker statements to intelligence published after, sometimes months after, the statements were made. This just does not make sense. For example, Amendment 97 addresses a conclusion which says the "President's suggestion that the Iraqi government was considering using UAVs to attack the United States was substantiated by intelligence judgments available at the time, but these judgments were revised a few months later, in January 2003." Whether the NIE judgments were reviewed after the President's speech is irrelevant to whether the statement was substantiated at the time it was made. Furthermore, we note that this conclusion also distorts the President's words because he did not say that Iraq was considering using UAVs to target the United States. Rather, he said: "we are concerned that Iraq was exploring ways of using these UAVs for missions targeting the United States," a comment that was fully consistent with the January 2003 NIE, *Nontraditional Threats to the U.S. Homeland Through 2007*. Obviously the intelligence community had to be concerned that Iraq could use these UAVs to target the homeland or they would not have been included in an NIE about threats to the Homeland at all.

We find the refusal to include all relevant intelligence and the inclusion of information published after the delivery of statements to be particularly ironic since in a letter on November 14, 2005, then-Vice Chairman Rockefeller, along with Senators Levin and Feinstein, wrote to the Majority and Minority Leaders explaining that they had "insisted that the Committee compare statements of government officials against all intelligence information prepared for circulation and relevant to the subject matter at issue, provided it was it was available at the time the statement was made."

This appeared to be considered a worthwhile task when the burden of collecting all of the available intelligence from the end of the Gulf War through the start of Operation Iraqi Freedom fell to Republican Members and their staff, but when the Democrats took charge, including only some of the intelligence was deemed acceptable. Perhaps forcing the Republican staff to review over 40,000 documents was just a request intended to delay further publication of the Phase II effort and allow the continuation of charges of "obstruction."

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The idea of limiting the intelligence to that which was "available at the time the statement was made" must have seemed like a better idea when the Democrats thought policymakers would not be able to use information published even days after their statements to defend themselves. When it turned out that this could be used to the majority's own advantage, however, information that was actually available to policymakers apparently became less important. Maybe the majority believes those reading the report will not bother to check the dates.

On behalf of the minority, the Vice-Chairman filed 26 amendments in the category of "cherry picking or excluding relevant information from the report." The Chairman refused to allow consideration of any of these amendments at the Committee's business meeting. (See Appendix A, amendments 13, 18, 20, 22, 26, 28, 29, 32, 38, 39, 54, 71(a), 81, 82, 97, 106, 108, 130, 132, and 133.

Unsubstantiated Claims/Distorting Intelligence

One of the most hypocritical aspects of the Majority report is that while it purports to cast judgment on how well policymakers characterized intelligence analysis in their public statements, the report itself distorts many policymakers' statements and the intelligence analysis. This has the unfortunate consequence of undermining the Committee's credibility in exercising oversight.

Several of the minority's amendments focused on the issue of mischaracterizing policymakers' statements. One example is Amendment 7 which addresses a portion of the majority report which says that the President, Vice President, and the Secretary of State "stated that the Iraq government had an active nuclear weapons program." However, even a cursory examination of the statements included for review in the report shows that none of the named individuals "stated" that Iraq had an "active nuclear weapons program," not one. Another amendment, Number 136, addresses a conclusion that claims the President and Vice President made statements that "Saddam Hussein was prepared to give weapons of mass destruction to terrorist groups for attacks against the United States." Yet, neither the President nor the Vice President said this.

The report also distorts the intelligence analysis to help bolster its case against policymakers. For example, Amendment 129 addresses a portion of the report which claims that the October 2002 NIE judged that "Saddam was unwilling to conduct terrorist attacks targeting the United States at that time." The NIE never said this. In fact, this NIE judged that Iraq was investigating mapping software for its UAVs, useless outside the United States. The NIE said this "suggests that Iraq is investigating the use of these UAVs for missions targeting the United States." In addition, Amendments 81-82 address a portion of the report which says that the "intelligence community was not aware of any large, deeply-buried facilities" in Iraq. This makes it sound as though the intelligence community did not assess that Iraq had deeply-buried facilities. In reality, the intelligence community had long assessed that Iraq had deeply-buried facilities in Iraq; they noted only that they were unable to specifically identify them, something hardly uncommon in intelligence.

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A final example, Amendment 58 addresses a conclusion about Iraq's biological weapons capabilities which states that policymakers' statements were substantiated by intelligence information, but concludes that they "did not discuss gaps in Iraq's biological weapons programs, which were explicit in the NIE." The NIE's assessment of Iraq's biological weapons program was that "all key aspects–R&D, production, and weaponization—of Iraq's offensive BW program are active and that most elements are larger and more advanced than they were before the Gulf war." This judgment and the NIE judgment that Iraq had biological weapons were "high confidence" judgments. In a ten-page discussion of Iraq's biological warfare capabilities only one sentence noted any gaps in knowledge of Iraq's BW program and this was only regarding "specific information on the types of weapons, agent, or stockpiles Baghdad has at its disposal." In other words, there were no gaps noted regarding the judgments that Iraq had an offensive biological weapons program or stocks, only uncertainty as to what kinds of agents were in those stocks—hardly a gap.

On behalf of the minority, the Vice-Chairman filed 31 amendments in this category–unsubstantiated claims or distorting information. The Chairman refused to allow consideration of any of these amendments at the Committee's business meeting. (See Appendix A, amendments 7, 11, 16, 17, 17(a), 19, 21, 22(a), 23, 30, 31, 33, 34, 41, 41(a), 58, 68, 70, 71, 83, 85, 86, 90, 96, 99, 119, 120, 121, 125, 126, 127, 128, 129, 131, 135, 135, 136, 137, and 140.

<u>Refusal to Offer Policymakers the Opportunity to Be Heard</u>

We also disagree with the majority's decision not to request interviews with policymakers whom the report alleges made unsubstantiated statements. These individuals deserve the opportunity to respond to the majority's allegations and be afforded the opportunity to inform the majority of intelligence information that may be lacking from the report that had been used in the preparation of their statements.

We note that in the last Congress the Democrats argued that policymakers needed to be brought before the Committee to be interviewed about their statements *even before* the Committee had made a determination about whether their statements were substantiated. Then-Vice Chairman Rockefeller even wrote to the Chairman with a list of people to be interviewed which included Secretary of State Colin Powell, Deputy Secretary of State Richard Armitage, then-National Security Advisor Condoleezza Rice, and then-Deputy National Security Advisor Stephen Hadley, among others.

In addition, Senators Rockefeller, Levin, and Feinstein wrote to the Senate leadership in November 2005 saying that a task force of Committee Members discussed the importance of interviewing current and former officials within the Departments of State and Defense and the Office of the Vice President, among others. While the letter was, in fact, not an accurate portrayal of the discussions at that meeting (the transcript of the meeting shows that the only individual the task force actually discussed interviewing was Secretary Powell), it nonetheless shows that these Members wanted to conduct such interviews.

We agreed that it was important to interview many of these individuals, and others, if the Committee Members found that any of their statements were not substantiated by the intelligence

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or if they were in another way relevant to the Committee's inquiry. At the time the Committee voted on the Phase II terms of reference in February 2004, Senator Levin agreed with us, noting "but you've got to ask policymakers who made statements relative to weapons of mass destruction what was the basis in intelligence for their statements, if we believe that their statements, reports, or testimony went beyond the intelligence that they were given." Despite this and despite Chairman Rockefeller's own letter requesting these interviews, when we requested that the interviews be conducted so that policymakers could respond to the drafted conclusions that alleged unsubstantiated statements, the request was ignored, and a motion to conduct these interviews offered at the Committee's business meeting was denied a hearing by the Chairman.

Interestingly, in the additional views attached to a Committee report on "*The Use by the Intelligence Community of Information Provided by the Iraqi National Congress,*" Chairman Rockefeller and Senators Levin, Feinstein, Wyden, Bayh, Mikulski, and Feingold wrote that the Committee Chairman had declined a request of the Vice Chairman for the Committee to interview White House officials, including speech writers, to fully understand how and why the intelligence assessments were included in major prewar speeches, such as the President's State of the Union Address and Secretary Powell's speech to the UN Security Council. Yet, none of these Members wanted to pursue these interviews once they were in charge of the review.

The only reason we can imagine why the Democrats would not undertake interviews that they had repeatedly requested in the last Congress, is that the interviews were another tactic at delaying the report and allowing more false charges of "obstruction."

Conclusion

Although we are troubled by all of the issues we have outlined thus far—that the report released today was a waste of Committee time and resources that should have been spent overseeing the intelligence community, that the report is part of a partisan agenda, that the report cherry picked information and distorted policymakers' statements and intelligence, and that the majority refused to offer those it is accusing the opportunity to be heard—we are most concerned about the damage that this report will do, and that the whole Phase II effort has done for the past several years, in creating the impression that policymakers should be bound to make policy based on only that which is published in intelligence assessments. This is not only wrong, it is dangerous and it is contrary to everything else this Committee has done since it published its first report on the Iraq intelligence failure. It has the effect of encouraging intelligence community analysts to become policymakers, and encouraging policymakers to adhere strictly to whatever analysts write, when we know that intelligence analysis can be dangerously inaccurate. Have we forgotten how wrong the intelligence judgments were in the October 2002 Iraq WMD NIE and how many other intelligence failures we had before that one? Intelligence is not incontestable truth and it is only one factor out of many that a policymaker must consider before making a policy decision.

This fallacy has also unnecessarily increased demands on the intelligence community. Requesting NIEs with unclassified key judgments has become sport in Washington as each side hopes the NIE will support its position. Cries of "politicization" usually follow from whichever

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side is unhappy with the results. This is not only unfair to the intelligence community, it is dangerous in that analysts will attempt to please all sides and their muddied judgments will help no one.

We expect intelligence analysts to follow tried and true marching orders for intelligence: tell me what you know, tell me what you don't know, tell me what you think, and make sure the policymaker understands the difference. Analysts cannot do this if they are constantly wondering if their assessments will be used for politics.

The Democratic majority, in the partisan way it attempted to suppress intelligence information and skew the historical record, is betting that the public and the media will not take the time to read these and other minority views that expose its hypocrisy. We have written these views to shine a light on it, for if there is any oversight value left in this fruitless endeavor that has consumed so much of the resources of this Committee over a four year period, it would be to expose the true intent of this supposed "oversight."

We regret the damaging effect the majority's report has on this Committee's credibility to oversee our intelligence community and we urge our colleagues to return to the non-partisan underpinnings that the Senate Intelligence Committee was founded upon.

CHRISTOPHER S. BOND
SAXBY CHAMBLISS
ORRIN G. HATCH
RICHARD BURR

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Appendix A

Filed Amendments on Phase II Report:

Whether Public Statements Regarding Iraq by U.S. Government Officials Were Substantiated by Intelligence

("Statements")

[redacted]

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Amendment 6

Page 3, last paragraph – *Overlaying this issue of the selective use of intelligence is the more fundamental issue of the selective declassification of intelligence. Intelligence information contained in many of the speeches analyzed in this report had to be declassified before being released publicly. The Executive Branch has the prerogative to classify information to protect national security, and unlike Congress the Executive Branch can declassify information relatively easily. Until the Congress sought and obtained the release of an unclassified version of the key judgments of the October 2002 National Intelligence Estimate on Iraq's presumed weapons of mass destruction programs, the analytical judgments of the Intelligence Community on these matters were classified. The collected intelligence underlying these judgments remained classified until after the invasion of Iraq. Few, if any, of the Intelligence Community's assessments on Iraq's links to terrorism, the intent of the Iraqi regime, projected post-war conditions, or other relevant matters contained in the statements of senior officials were publicly released before the war. This ability of the Executive Branch to unilaterally declassify and divulge intelligence information at a time, place, and in a manner of its choosing must also be taken into account when evaluating policymakers' use of intelligence information.*

Amendment 6 – **Strike** the above paragraph.

Comment – It is misleading to simply say that the Executive branch makes "unilateral" decisions about what to declassify. Congress can also request declassification and usually gets what it wants unless the Executive branch can establish a sources-and-methods reason not to disclose it. In addition, Section 8 of S. Res. 400 offers a mechanism for the Senate to disclose classified information. The fact that the Senate chose not to do this does not mean that it did not have the opportunity.

Amendment 7

Page 6, first full non-bullet paragraph – *In major policy speeches the President, the Vice President and the Secretary of State indicated that the Iraqi government had an active nuclear weapons program.*

Amendment 7– **Strike** the above sentence.

Comment – None of the statements listed in the report shows that the President, Vice President, or Secretary of State indicated that the Iraqi government had an active nuclear weapons program. We believe that if this Committee is going to scrutinize each and every word these policymakers uttered, we should clearly state what they said, not re-interpret what they said.

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Amendment 11

Page 7, first paragraph – *They agreed that if Iraq decided to restart a nuclear weapons program, with proper foreign assistance it could produce enough fissile material for a nuclear weapon within five to seven years, and that if Iraq in some way acquired adequate fissile material from a foreign source, it could produce a nuclear weapon within one year.*

Amendment 11 – **Strike** *proper, in some way,* and *adequate.*

Comment – The coordinated assessments did not use the terms "proper," "in some way" and "adequate." The Committee should be accurate in describing the assessments; they should be deleted from the report.

Amendment 13

Page 7, second paragraph -- *In April 2001, the CIA noted that Iraq's attempts to purchase high-strength aluminum tubes and other dual-use equipment suggested that a reconstitution effort might be underway. This judgment was included in several other CIA assessments. In August 2002 the CIA published a paper on Iraqi WMD capabilities (Iraq: Expanding WMD Capabilities Pose Growing Threat), which concluded that these procurement activities indicated that the Iraqi government had restarted its nuclear weapons program.*

Amendment13 – **Insert** after the above sentence A December 2001 CIA Senior Executive Memorandum said that procurement activities "show Iraq is trying to jump-start a clandestine uranium enrichment program to produce the fissile material for a weapon, potentially by late this decade, assuming it produces the necessary components indigenously." In January 2002, the CIA published an assessment which said, "Procurement activities detected in the past year are consistent with Iraq attempting to jump-start a clandestine uranium enrichment program to produce the fissile material needed to make a nuclear weapon, potentially by late this decade. Iraq retains a significant number of nuclear program scientists, program documentation, and probably the manufacturing infrastructure to support a nuclear weapons program."

[redacted] Comment – We requested that several relevant reports below be added to this section, but they were added only to the footnote. We would at least like the December 2001 report, which seems to be the most important and relevant to policymaker's statements in questions, added to the text.

- A July 2001 CIA assessment, Iraq: New Effort to Get Centrifuge-Related Tubes, had the same assessment as the April 2001 paper already cited.
- An October 2001 Senior Executive Intelligence Brief (SEIB) discussed Iraq's "nuclear-related procurement efforts," including the aluminum tubes and uranium from Niger.
- In a November 2001 Senior Executive Memorandum (SEM) the CIA wrote that "[redacted] reporting indicate Baghdad still has a vast procurement network to seek materials and equipment that can be used in a centrifuge program, including the recent effort to get aluminum tubes for a Zippe-type centrifuge, but it is unclear if Iraq has embarked on an extensive nuclear weapons effort."

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- Also in November 2001 a CIA SEIB titled "Iraq: Seeking to Rebuild Enrichment Capability" discussed Iraq's procurement of aluminum tubes.
- A December 2001 SEM said "Procurement activities detected within the past year show Iraq is trying to jump-start a clandestine uranium enrichment program to produce the fissile material for a weapon, potentially by late this decade, assuming it produces the necessary components indigenously."
- In January 2002 the CIA wrote in a Senior Publish When Ready (SPWR) that "Procurement activities detected in the past year are consistent with Iraq attempting to jump-start a clandestine uranium enrichment program to produce the fissile material needed to make a nuclear weapon, potentially by late this decade. Iraq retains a significant number of nuclear program scientists, program documentation, and probably the manufacturing infrastructure to support a nuclear weapons program."
- In March 2002 a CIA SPWR said "We assess that Iraq currently may be trying to reconstitute its gas centrifuge program. Since intrusive inspections ended in 1998, Iraq has increased efforts to buy critical dual-use items that could support a gas centrifuge program, including aluminum tubes suitable for rotors, magnets, machine tools, essential chemicals and centrifuge cascade related equipment."

Amendment 16

Page 7, last partial paragraph – *The Department of Energy (DOE) disagreed with the CIA's conclusions regarding the aluminum tubes, and assessed that it was more likely that the tubes were intended for a different use, such as a conventional rocket program. Based on other evidence, including Saddam's meetings with Iraqi nuclear scientists, and possible attempts to procure uranium from Niger, the DOE assessed in July 2002 that Iraq might be attempting to reconstitute a nuclear weapons program, but suggested that the evidence was not conclusive.*

Amendment 16 – **Strike** the above paragraph and **insert** In a July 2002 paper the Department of Energy (DOE) said "Multiple-source reporting suggests that Saddam Hussein is seeking to reconstitute Iraq's nuclear weapons program. Although the reporting produces no "smoking gun," continued vigilance is required regarding Iraq's attempts to rejuvenate its nuclear weapons program."

Comment – We do not believe that an assessment which solely discusses DOE's judgment about the end-use for the aluminum tubes is relevant in this section because the assessment did not discuss nuclear reconstitution at all. The statements under review from the Vice President make no mention of aluminum tubes. The report should say what DOE's assessment was of reconstitution, which was: "Multiple-source reporting suggests that Saddam Hussein is seeking to reconstitute Iraq's nuclear weapons program. Although the reporting produces no "smoking gun," continued vigilance is required regarding Iraq's attempts to rejuvenate its nuclear weapons program."

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Amendment 17

Page 8, first full paragraph – *The Department of State's Bureau of Intelligence and Research (State/INR) disagreed with the CIA that Iraq had restarted a nuclear weapons program, and concurred with the DOE that the aluminum tubes were probably intended for other purposes. This view was included in congressional testimony in September 2002, but State/INR did not publish any reports on the aluminum tubes outside the State Department until after publication of the October 2002 NIE.*

Amendment 17 – **strike** the above paragraph and **insert** INR did not publish any assessments outlining their views on reconstitution of Iraq's nuclear program prior to the Vice President's statement.

Comment – The comment that INR "disagreed with the CIA that Iraq had restarted a nuclear weapons program, and concurred with the DOE that the aluminum tubes were probably intended for other purposes" has no citation. If the intent is to cite this to the Committee's first report, the attribution is mischaracterizing the comments in that report. The Committee's report was describing what INR analysts told the staff after the fact about their views at the time, which should not be construed to mean those views were articulated to policymakers. The report should cite a document or report in which INR "disagreed," otherwise this discussion should be deleted. In addition, if testimony to Congress is going to be offered in lieu of an assessment from INR, the report should include comments attributed to the National Ground Intelligence Center (NGIC) at the same hearing. Testimony at the September 17, 2002 hearing was that "State/INR and DOE are still examining the latest specifications but currently believe that the tubes more likely are intended for alternative conventional weapons uses, such as the multiple rocket launcher program. The NGIC – the U.S. experts on foreign ground force weapons systems – notes, however, that Iraq's dimensional requirements for the tubes are far stricter than necessary for rocket casings." Finally, we do not understand why testimony given in mid-September is being used in a section which analyzes the Vice President's speech from August. This report is supposed to determine whether policymakers' statements were substantiated by intelligence. How can we expect policymakers to be aware of a view that wasn't published or briefed to them until after they made their statement?

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Amendment 17(a)

[redacted] Page 8, second full paragraph – *Several of these intelligence agencies also made reference to assessments by the National Ground Intelligence Center (NGIC) regarding the aluminum tubes. Testimony by the Director of Central Intelligence to Congress stated that NGIC judged that "Iraq's dimensional requirements for the tubes are far stricter than necessary for rocket casings." A later memo from State/INR said that "the IAEA and the* [redacted] *pertinent nuclear-technical experts have concluded independently that the aluminum tubes are not intended for Iraq's nuclear program and are consistent with rocket casings...DOE and DoD's National Ground Intelligence Center (NGIC) concur on this assessment, though NGIC does not share most of the other DOE views on tactical rockets."*

[redacted] Amendment 17(a) – **strike** *A later memo from State/INR said that "the IAEA and the* [redacted] *pertinent nuclear-technical experts have concluded independently that the aluminum tubes are not intended for Iraq's nuclear program and are consistent with rocket casings...DOE and DoD's National Ground Intelligence Center (NGIC) concur on this assessment, though NGIC does not share most of the other DOE views on tactical rockets."*

Comment – We see that the Majority added this information to the report after the amendment filing deadline. We asked that the National Ground Intelligence Center (NGIC) information be included, but we did not request and did not consent to including the State/INR paper for two reasons: first, because it was published more than two months after the Vice President's speech; and second, because the report misquotes the INR document. The INR report did not say that DoD's NGIC concurred with the assessment that the aluminum tubes were consistent with rocket casings. This is a gross distortion of the INR assessments and the position of NGIC. If this text is included, it will make the Committee look foolish since our own 2004 report explained that NGIC was one of the main proponents of the argument that the tubes were inconsistent with rocket casings. The INR report said that that NGIC agreed only with the assessment that high strength is used for tactical rockets by a number of countries; although NGIC said in the NIE that because of the unsuitability of the wall thickness and weight of the Iraqi aluminum tubes that they were "unlikely to be intended for rocket motor cases. The report, as drafted, clearly misquotes the INR paper. This should be deleted.

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Amendment 18

Page 8, third full paragraph – *According to a DIA report, the intelligence community continued to assess that it would take five to seven years from the commencement of a revived nuclear program for the Iraqi government to indigenously produce enough fissile material for a nuclear weapon. This same report repeated the assessment that a nuclear weapon could be constructed much faster if adequate fissile material was acquired from a foreign source, though an earlier CIA assessment noted that "we have not detected a dedicated Iraqi effort to obtain fissile material abroad."*

Amendment 18 – **Strike** the above paragraph.

Comment/Suggestion – This is a May 2002 DIA report referring to an intelligence community judgment which had not been updated since 2000. At the time of the Vice President's speech, DIA assessed that Iraq could have a weapon as soon as 2006, and INR had no judgment on this since the 2000 ICA. This sentence should be changed to accurately reflect the judgments of each agency.

Amendment 19

Page 8, last paragraph – *In the President's address to the United Nations General Assembly, he stated that Iraq continued to develop weapons of mass destruction, and indicated that Iraq had an ongoing nuclear weapons program.*

Amendment 19 – **Strike** the paragraph above.

Comment – None of the statements in the report taken from the President's speech suggest that Iraq had an ongoing nuclear weapons program. The President commented that Iraq employed capable nuclear scientists, retained physical infrastructure needed to build a weapon, and made attempts to buy aluminum tubes. As noted in the report, several intelligence community assessments mentioned these things without concluding that Iraq had an ongoing nuclear weapons program.

[redacted]

[redacted]

Amendment 20

Page 9, first full paragraph - *Though the intelligence community as a whole had not yet concluded that a nuclear weapons program was underway, some (though not all) intelligence agencies believed that Iraq's attempts to acquire high-strength aluminum tubes, along with supporting evidence such as Saddam's meetings with Iraqi nuclear science personnel, indicated that the nuclear program was in fact being reconstituted.*

Amendment 20 – **strike** *(though not all)* and **insert** and the end of the paragraph All intelligence agencies assessed that the aluminum tubes could be used to enrich uranium for nuclear weapons, but DOE and State INR assessed that the tubes were more likely intended for a conventional weapons program.

Comment – Again, the President did not say that Iraq had reconstituted its nuclear program or had an ongoing nuclear program in this speech. He mentioned the acquisition of aluminum tubes "used to enrich uranium for a nuclear weapon." All agencies, including DOE and State/INR assessed that these tubes *could* be used for this purpose and Saddam's meeting with nuclear science personnel were discussed in numerous intelligence community papers from CIA, DIA, and DOE. A discussion of whether or not agencies judged that these efforts were part of a reconstituted nuclear program is irrelevant here because the President did not say they were part of a reconstituted nuclear program. Also, "some" always means "not all." This is redundant.

Amendment 21

Page 9, second paragraph – *Intelligence community analysts generally believed that the Iraqi government's failure to provide certain evidence and documents regarding its pre-1991 nuclear program indicated that the Iraqi government was attempting to conceal this information. However, this conclusion was not cited by the intelligence community as compelling evidence for a reconstituted, post-Gulf War nuclear weapons program.*

Amendment 21– **strike** *However, this conclusion was not cited by the intelligence community as compelling evidence for a reconstituted, post-Gulf War nuclear weapons program.*

Comment – Again, the last sentence is irrelevant because the President did not cite Iraq's concealment of documents as evidence of a reconstituted, post-Gulf War nuclear weapons program. His comments about withholding information refer to the pre-Gulf War program.

[redacted]

[redacted]

Amendment 22

Page 9, third full paragraph – *Numerous intelligence assessments made reference to open source information showing that Saddam met with personnel from the Iraqi Atomic Energy Commission (IAEC).*

Amendment 22 – **Strike** *made reference to open source information showing* and **insert** showed

Comment – The majority report changed this sentence from saying "intelligence reporting" to "open source information." The report should still say "intelligence" because numerous intelligence assessments cited the meetings between Saddam and the IAEC personnel and much of the information was from intelligence reporting vice open source reporting. This information was provided to the Majority as requested and still it was not included in the report.

- In January 2002, a DIA Executive Highlight (EH) said "... the increased frequency of operations at former and suspect nuclear facilities is highly suspect. In a possibly related incident, Saddam Husayn met with the Iraqi Atomic Energy Commission on 10 January and praised its efforts. Baghdad probably will continue trying to reconstitute its nuclear weapons program. Although no firm evidence exists that reconstitution has begun, Iraq had continued to obtain dual-use equipment and to maintain its scientific cadre."
- In January 2002, another DIA assessment said, "Persistent procurement efforts to acquire approximately 60,000 aluminum alloy tubes, coupled with recent statements by Saddam to the Iraqi Atomic Energy Commission, suggest an intent to reconstitute the nuclear program."
- In September 2002, a DIA Key WMD Operational Support study on Iraq said "Iraq likely revitalized its nuclear weapons program shortly after the end of UNSCOM inspections ended in December 1998. There is no firm evidence of a current nuclear weapon design effort, but we judge that continued procurement of dual-use nuclear-related items, the assignment of key personnel to nuclear weapon-capable sites, construction at nuclear facilities, and Saddam's interactions with the Iraqi Atomic Energy Commission all indicate that Iraq revitalized its nuclear weapon program after 1998."
- CIA SPWR 9/11/2002 – "Saddam's exhortations to his nuclear Mujahidin, periodically reported in the Iraqi press since 1998, are the most compelling indicator that his nuclear weapons work resumed in 1998, when inspectors were ordered out of Iraq."
- DIA assessment September 2002, "The renewed regular contact between Saddam and the IAEC, as well as the enhanced security, suggests the IAEC is again the focal point of Saddam's nuclear program."
- July 22, 2002, DOE assessment "Nuclear Reconstitution Efforts Underway?" said, "According to Iraqi press reports, Saddam recently met with personnel from the IAEC. He reportedly commended the staff for their efforts 'to make science serve the programs of comprehensive development, which are under way in Iraq despite the circumstances of the wicked embargo.' The staff was referred to in the press report as mujahidin . . . These meetings indicate that Saddam continues to place a high priority on a potential nuclear option for his strategic goals."

[redacted]

[redacted]

Amendment 22(a)

Page 9, fourth full paragraph – *At the time of the President's address to the General Assembly, the intelligence community had not changed its judgment that it would take Iraq at least several years to produce enough fissile material for a nuclear weapon ('five to seven years' was the commonly cited timeframe, though a September 2002 DIA report judged that it could be done in four), and that Iraq could build a nuclear weapon within one year if it in some way acquired an adequate amount of fissile material from a foreign source.*

Amendment 22(a) – **strike** *it would take Iraq at least several years to produce enough fissile material for a nuclear weapon ('five to seven years' was the commonly cited timeframe, though a September 2002 DIA report judged that it could be done in four), and that*

Comment – The beginning of this sentence is not related to the President's comments. He said what Iraq could do should it "acquire" fissile material. How long it would take Iraq to indigenously produce fissile material is irrelevant. In addition, since the 2000 ICA did not say "in some way" it should be deleted.

Amendment 23

Page 10, first paragraph – *Additionally, he said that there was clear evidence that Iraq was developing a nuclear weapon, declaring that "facing clear evidence of peril we cannot wait for the final proof – the smoking gun – that could come in the form of a mushroom cloud.*

Amendment 23 – **Strike** *there was clear evidence that Iraq was developing a nuclear weapon, declaring that*

Comment – None of the statements cited in the report from the Cincinnati speech quote the President saying that "there was clear evidence that Iraq was developing a nuclear weapon." The report should simply say what the President said.

[redacted]

Amendment 26

Page 10, third paragraph – *State/INR dissented from the majority view, and stated in the NIE that the available evidence did "not add up to a compelling case for reconstitution" of an Iraqi nuclear weapons program.*

Amendment 26 – **strike** *State/INR dissented from the majority view, and stated in the NIE that the available evidence did "not add up to a compelling case for reconstitution" of an Iraqi nuclear weapons program.* and **insert** State/INR dissented from the majority view, and stated in the NIE key judgments that "the activities we have detected do not, however, add up to a compelling case that Iraq is currently pursuing what INR would consider to be an integrated and comprehensive approach to acquire nuclear weapons." In the main text of the NIE, INR assessed that the available evidence did "not add up to a compelling case for reconstitution" of an Iraqi nuclear weapons program. In the President's summary of the NIE, INR offered another version of its judgment, stating that "INR judges that the evidence indicates, at most, a limited Iraqi nuclear reconstitution effort."

Comment - Because this section of the report is being used to consider whether the President's statements were substantiated by intelligence, we believe it is appropriate to include the President's summary of the NIE, a document specifically prepared for and briefed to the President. The President's summary of the NIE said, "Most agencies judge that Iraq is reconstituting a nuclear weapons program. INR judges that the evidence indicates, at most, a limited Iraqi nuclear reconstitution effort." In addition, the key judgments of the NIE said, "The activities we have detected do not, however, add up to a compelling case that Iraq is currently pursing what INR would consider to be an integrated and comprehensive approach to acquire nuclear weapons." All of these are slightly different and should be included to show what was available to the President.

Amendment 28

Page 10, fourth paragraph – *Construction at sites known to have been part of Iraq's pre-Gulf War nuclear weapons program was mentioned in earlier assessments (though not specifically in the NIE).*

Amendment 28 – **strike** *(though not specifically in the NIE).* and **insert** including in the NIE.

Comment – The comment in the report is incorrect. Construction activity at Tuwaitha, a facility associated with Iraq's pre Gulf war nuclear program was discussed in the 2002 NIE on page 24. This should be noted in the report.

[redacted]

[redacted]

Amendment 29

Page 10, last paragraph – *State/INR's alternative views, which were incorporated in the NIE, said that State/INR accepted "the view of technical experts at the Department of Energy" who concluded that the aluminum tubes were "poorly suited" for a nuclear weapons program. The alternative views also cast doubt on the judgment that other dual-use procurement efforts were related to a nuclear program, and went on to say that "the information we have on Iraqi nuclear personnel does not appear consistent with a coherent effort to reconstitute a nuclear weapons program.*

Amendment 29 – At the end of the paragraph **insert** In the President's summary of the NIE, INR said it judges that the evidence indicates, at most, a limited Iraqi nuclear reconstitution effort."

Comment – Again, we believe that if the Committee is going to compare intelligence to statements made by the President, it should include the President's summary of the NIE.

[redacted]

Amendment 30

Page 11, first paragraph - *The majority view of the NIE assessed that Iraq would be able to produce a nuclear weapon in five to seven years, and posited a "much less likely scenario" in which production time could be shortened to three to five years. The majority view also assessed that if Iraq acquired fissile material from an outside source that production time could be "within several months to a year", but noted that Iraq did not appear to have a "systematic effort to acquire foreign fissile materials from Russia [or] other sources." State/INR said that it could not predict when Iraq might acquire a nuclear weapon, since it lacked persuasive evidence of a reconstituted nuclear program.*

Amendment 30 – **strike** *The majority view of the NIE assessed that Iraq would be able to produce a nuclear weapon in five to seven years, and posited a "much less likely scenario" in which production time could be shortened to three to five years. The majority view also assessed that if Iraq acquired fissile material from an outside source that production time could be "within several months to a year", but noted that Iraq did not appear to have a "systematic effort to acquire foreign fissile materials from Russia [or] other sources." State/INR said that it could not predict when Iraq might acquire a nuclear weapon, since it lacked persuasive evidence of a reconstituted nuclear program*
and **insert** <u>The NIE key judgments said "if Baghdad acquires sufficient fissile material from abroad it could make a nuclear weapon within several months to a year." The main text of the NIE added "although we have seen only a few Iraqi attempts to acquire material from abroad, those efforts do not seem to be part of systematic effort to acquire foreign fissile materials from Russia or other sources." State/INR said that it could not predict when Iraq might acquire a nuclear weapon, since it lacked persuasive evidence of a reconstituted nuclear program.</u>

Comment – The paragraph as drafted distorts the NIE's key judgments which actually listed the assessment that Iraq could build a weapon in one year as the first bullet point. The characterization in the report makes it sound like an afterthought or as if it was the last and, therefore, most minor issue the NIE considered, which it was not. Also, how long it would take Iraq to indigenously develop fissile material was irrelevant to what the President was talking about. He specifically said he was discussing how long it would take Iraq to build a weapon if it "acquired" fissile material. Also, it should be clear that the detail about not detecting a systematic effort was from the main body of the NIE, not the key judgments.

[redacted]

[redacted]

Amendment 31

Page 11, second paragraph – *In the President's 2003 State of the Union Address, he stated that Iraq had pursued nuclear weapons even while weapons inspectors were in Iraq. He also said that the Iraqi regime had attempted to purchase aluminum tubes that could be used in a nuclear program, and that "the British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa."*

*While the intelligence community assessed that Iraq had initially attempted to continue its nuclear weapons program following the imposition of post-Gulf War sanctions, most agencies believed that the IAEA and UNSCOM had succeeded in destroying or neutralizing Iraq's nuclear infrastructure, and that the regime did not resume its pursuit of nuclear weapons until December 1998, when UNSCOM inspectors left the country.*

Amendment 31 – **insert** after the first paragraph above He noted that Saddam "has not credibly explained these activities." **Strike** the second paragraph and **insert** The intelligence community assessed that Iraq had initially attempted to continue its nuclear weapons program following the imposition of post-Gulf War sanctions. In September 2002 the DCI submitted testimony to Congress that "revelations after the Gulf war starkly demonstrated the extent of [Iraq's] denial . . . The IAEA did not recognize ongoing uranium enrichment activities" at two sites inspected by the IAEA. Most agencies believed that the IAEA and UNSCOM had succeeded in destroying or neutralizing Iraq's nuclear infrastructure in the mid-1990s.

Comment – None of the above discussion from the report is relevant to what the President said. He said that Iraq had pursued a nuclear weapons program while inspectors were in Iraq. This statement is substantiated by intelligence. Director Tenet's submitted testimony to the SSCI and SASC from September 2002 notes that, "Revelations after the Gulf war starkly demonstrated the extent of that denial. Based on CIA briefings about two suspect nuclear sites, the IAEA inspected Tuwaitha and Tarmiyah in mid-May 1991. The IAEA did not recognize ongoing uranium enrichment activities using Electromagnetic Isotope Separation at these sites, as neither it nor the US intelligence community anticipated such work was underway." This testimony makes it clear that the intelligence community did say that Iraq's nuclear program continued while inspectors were in Iraq. Current views of reconstitution and views of whether the IAEA and UNSCOM stopped those activities are irrelevant to the analysis. Finally, there is no citation for these claims at all.

[redacted]

[redacted]

Amendment 32

Page 11, fourth paragraph – *The October 2002 NIE contained an annex on the high-strength aluminum tubes. Although all the intelligence agencies agreed that the aluminum tubes were a dual-use technology, DOE and State/INR assessed that it was unlikely that the tubes were being used for nuclear weapons-related purposes. Other agencies concurred with the majority view, which cited the aluminum tubes as the primary evidence of an ongoing nuclear weapons program. Neither the concurring nor dissenting agencies changed their view between the publication of the NIE and the invasion of Iraq.*

Amendment 32 – **strike** the above paragraph and **insert** - In the October 2002 NIE all intelligence agencies agreed that the aluminum tubes could be used for nuclear weapons and that Iraq was required to declare the imports and subject them to UN/IAEA monitoring, but DOE and State/INR assessed that it was unlikely that the tubes were intended to be used for nuclear weapons-related purposes. On December 17, 2002, CIA prepared an analysis of Iraq's weapons declaration which noted that it "fails to acknowledge or explain procurement of high specification aluminum tubes we believe suitable for use in gas centrifuge uranium enrichment effort" and "fails to acknowledge efforts to procure uranium from Niger, as noted in the UK dossier."

Comment – The President was discussing the fact that Iraq was importing aluminum tubes it was prohibited from importing and that it had not credibly explained these activities. He did not say these items were part of a reconstituted nuclear program, only that Iraq had not credibly explained why it was importing such materials. Intelligence noting that all agencies assessed the aluminum tubes could be used for nuclear weapons and were prohibited items is more relevant to the statement in question.

[redacted]

[redacted]

Amendments 33 and 34

Page 11, last paragraph – *An unclassified British white paper from September 2002 had assessed that Iraq had sought large quantities of natural (non-enriched) uranium from Africa. This was echoed by a statement in the NIE, which said "Iraq also began vigorously trying to procure uranium ore and yellowcake; acquiring either would shorten the time Baghdad needs to produce nuclear weapons." This was not cited by the NIE as key evidence for an ongoing nuclear program. State/INR's alternative views said that "the claims of Iraqi pursuit of natural uranium in Africa are, in INR's assessment, highly dubious."*

Amendment 33 – **strike** *This was echoed by a statement* and **insert** This assessment was also included .

Amendment 34 - **strike** *This was not cited by the NIE as key evidence for an ongoing nuclear program.*

Comment – We suggest not using the word "echoed" which makes it sound like the intelligence community took the idea from the British White Paper, which was not the case. In addition we do not think the characterization of "key evidence" is accurate (we do not think the NIE used the term evidence) and the President did not say it was key evidence of reconstitution so this sentence is irrelevant.

[redacted]

Amendment 38

Page 13, last paragraph – *On September 8, 2002, the National Security Advisor said that the aluminum tubes sought by Iraq "are only really suited for nuclear weapons programs". Although both the CIA and DIA had assessed that the aluminum tubes were intended for a nuclear weapons program (with the CIA noting that the tubes were "best suited" for centrifuges, and that other explanations were "inconsistent with the total body of intelligence"), the DOE had assessed that this was unlikely, and had published intelligence reports explaining why it was possible (and, in the DOE's view, more likely) that the tubes were intended to be used to build conventional rockets.*

Amendment 38 – **strike** *Although both the CIA and DIA had assessed that the aluminum tubes were intended for a nuclear weapons program (with the CIA noting that the tubes were "best suited" for centrifuges, and that other explanations were "inconsistent with the total body of intelligence"), the DOE had assessed that this was unlikely, and had published intelligence reports explaining why it was possible (and, in the DOE's view, more likely) that the tubes were intended to be used to build conventional rockets.* and **insert** Both the CIA and DIA had assessed that the aluminum tubes were intended for a nuclear weapons program (with the CIA noting that the tubes were "best suited" for centrifuges, and that other explanations were "inconsistent with the total body of intelligence.") In April 2001 CIA published a paper which said, "Iraq is trying to purchase items that have little use other than for a uranium enrichment program." In August 2002, CIA published another paper which said, "Although we have considered alternative explanations for the tubes – such as their use in multiple rocket launchers (MRLs) – CIA concurs with ground forces weapons experts in the Intelligence Community that such an explanation is inconsistent with the overall body of intelligence on the subject." More than a year earlier the DOE published an assessment that said an application other than centrifuge use was "more likely" but noted that "regardless of end use, the delivery of aluminum tubes with the reported specifications to Iraq would be prohibited" items under the Nuclear Suppliers Group and UN Security Council Resolutions.

Comment – We believe the report as drafted excludes relevant information which was far more likely to have been provided to Secretary Rice than a DOE assessment published a year earlier. These should be included and DOE's judgments should be put in its own words, rather than those of the report authors. DOE used the words "more likely" not "unlikely.

- CIA, SEIB 01-083CHX April 10, 2001, "Iraq is trying to purchase items that have little use other than for a uranium enrichment program."
- CIA, August 2002, "Although we have considered alternative explanations for the tubes – such as their use in multiple rocket launchers (MRLs) – CIA concurs with ground forces weapons experts in the Intelligence Community that such an explanation is inconsistent with the overall body of intelligence on the subject."

[redacted]

[redacted]

Amendment 39

Page 14, second non-bullet paragraph – [redacted] *Intelligence obtained after the Gulf War indicated that Iraq had developed two designs for nuclear weapons. Both apparently failed to meet key Iraqi objectives – the smaller of the two had an estimated yield of less than* [redacted], *and the larger of the two, which had an estimated yield of* [redacted], *could not be delivered by missile.*

Amendment 39 – **strike** [redacted] *Intelligence obtained after the Gulf War indicated that Iraq had developed two designs for nuclear weapons. Both apparently failed to meet key Iraqi objectives – the smaller of the two had an estimated yield of less than* [redacted], *and the larger of the two, which had an estimated yield of* [redacted], *could not be delivered by missile.* **and insert** [redacted] Numerous intelligence assessment noted that Iraq had developed two designs prior to the Gulf War. According to a 1999 IC nuclear assessment, "nuclear design efforts from 1988 through mid-1990 were focused primarily on [redacted] concepts and, in 1990, Iraq began to explore more advanced designs to permit smaller size and higher yield."

Comment – [redacted] The Secretary's comments were made prior to the publication of the NIE, so the citation of the NIE here is irrelevant. The Committee should include intelligence assessments which were published before the statement in question such as the following:

- "By 1991, Iraq had demonstrated sufficient calculational capability and an understanding of high-explosive systems to design devices with yields of as much as [redacted] for large diameter weapons and as much as [redacted] for more advanced designs." PWR031202-12
- 1999 JAEIC assessment – "According to all available information, nuclear design efforts from 1988 through mid-1990 were focused primarily on [redacted] concepts and, in 1990, Iraq began to explore more advanced designs to permit smaller size and higher yield."
- 1999 DIA assessment, DoD Futures Intelligence Program, "It previously performed field tests of nuclear weapon designs [redacted]"
- March 14, 2002 SPWR, *Iraq: Nuclear Weapon Design Program PubNo: SPWR031402-02,* According to Iraqi-supplied documents, seized Iraqi documents, and reporting from Iraqi defectors, Iraq by early 1991 had researched [redacted] designs and had conducted substantial work on an advanced [redacted] design [redacted]

[redacted]

Amendments 41 and 41(a)

Page 14, last paragraph – *In September 2002 the Vice President stated that there was "irrefutable evidence" that Iraq had reconstituted a nuclear weapons program. As noted, several intelligence agencies assessed that reconstitution was underway, but the Department of Energy assessed that the evidence was less conclusive (State/INR agreed with the Department of Energy, but had not published any reports on the topic outside of the State Department at that point).*

Amendment 41 – **strike** *but the Department of Energy assessed that the evidence was less conclusive.* and **insert** . In an assessment in August 2002, the DOE said, multiple-source reporting suggests that Saddam Hussein is seeking to reconstitute Iraq's nuclear weapons program. Although the reporting produces no "smoking gun," continued vigilance is required regarding Iraq's attempts to rejuvenate its nuclear weapons program." At hearing before the SSCI in September 2002, however, the DCI testified that "Iraq's aggressive pursuit of high-strength aluminum tubes provides compelling evidence that Saddam is attempting to reconstitute a uranium enrichment effort for Baghdad's nuclear weapons program." No dissenting opinion regarding reconstitution was included in this testimony and the DOE witness testified that his agency had no disagreement with testimony presented about Iraq reconstituting its nuclear program.

Amendment 41(a) – **strike** *(State/INR agreed with the Department of Energy, but had not published any reports on the topic outside of the State Department at that point).*

Comment - Testimony from the DCI on September 17, 2002 to the SSCI and the SASC says "Iraq's aggressive pursuit of high-strength aluminum tubes provides compelling evidence that Saddam is attempting to reconstitute a uranium enrichment effort for Baghdad's nuclear weapons program." There are no dissenting views mentioned on reconstitution during this testimony at all. The DOE never used the words "less conclusive." We also note that State/INR could not possibly convey an agreement with DOE to policymakers if it did not publish a judgment. In addition, this information was added to the report after the majority imposed amendment filing deadline, without the permission of the minority, which is inappropriate.

[redacted]

[redacted]

Amendment 42

Page 15 - ***Conclusion 1: Statements by the President, Vice President, Secretary of State and the National Security Advisor regarding a possible Iraqi nuclear weapons program were generally substantiated by intelligence community estimates, but did not convey the substantial disagreements that existed in the intelligence community.***
*Prior to the October 2002 National Intelligence Estimate, some intelligence agencies assessed that the Iraqi government was reconstituting a nuclear weapons program, while others disagreed or expressed doubts about the evidence. The Estimate itself expressed the majority view that the program was being reconstituted, but included clear dissenting views from the State Department's Bureau of Intelligence and Research, which argued that reconstitution was not underway, and the Department of Energy, which argued that aluminum tubes sought by Iraq were probably not intended for a nuclear program.*

Amendment 42 – **strike** the conclusion as drafted and **insert** All policymaker statements reviewed in this section were substantiated by the available intelligence.

Comment – It is impossible for us to properly analyze the claims in this conclusion without knowing which specific statements the report is referencing. Also, it is incorrect to say that "others" disagreed or expressed doubts about the evidence of a reconstituted nuclear program. At most, only one agency expressed any doubt about the reconstitution judgment and not in any document published outside its own agency prior to publication of the NIE. Although not stated definitely we believe that the statements this conclusion is referencing were made prior to the publication of the NIE, so the inclusion of INR's dissent referenced in the NIE is irrelevant and unfair to those speakers. Additionally, it is misleading to discuss DOE's dissent on the aluminum tubes but not include the fact that DOE agreed that Iraq was reconstituting its nuclear program.

Amendment 43

Page 16, Postwar Findings – entire section.

Amendment 43 – **strike** the postwar findings section

Comment - None of the postwar findings has citations so we cannot check their accuracy. Even with citations, we do not believe that postwar findings are in any way relevant to whether policymakers statements made prior to the war were substantiated by intelligence available at the time. This information was already reported in another Phase II report, is unnecessary, and is likely to confuse readers who may think statements are unsubstantiated if they turned out to be wrong.

[redacted]

[redacted]

Amendment 54

Page 26, third paragraph - *The DIA issued a report in February 2003, Iraq: Denial and Deception: Iraqi Countertargeting Strategy, that stated it was standard denial and deception practice for Iraq to place various military hardware in, among other things, "palm and date tree groves ...," but this report was issued after Secretary Powell's speech and did not mention biological weapons. There was operational intelligence traffic on this issue prior to the Secretary's speech, but the Committee is not aware of prior analytical assessments.*

Amendment 54 – **Strike** the above paragraph and **insert** The CIA provided an intelligence report for use in Secretary Powell's UN speech which said that an Iraqi missile brigade commander supervised the dispersal of his brigade's al Samoud and Ababil-100 missiles in order to hide them from UN inspectors. The report said that some of the missiles had warheads containing an "unknown biological agent' and that the missiles were hidden in "large palm groves."

Comment – The document which we asked the drafters to incorporate is not "operational intelligence traffic" as stated in the report. It is a TD (telegraphic dissemination), or intelligence report, and it was provided to the Committee by the CIA when the Committee asked specifically what information it provided to Secretary Powell for use in this speech. The fact that the Committee is unaware of "analytical assessments" is irrelevant, because the Committee agreed to use "intelligence" to compare to statements, not just "analytic assessments." This report was included in the Committee's first Iraq report on page 243 and should be included in this report as well.

[redacted]

[redacted]

Amendment 58

Page 28, BW Conclusions – *Conclusion 2: Statements in the major speeches analyzed, as well additional statements, regarding Iraq's possession of biological agent, weapons, production capability, and use of mobile biological laboratories were substantiated by intelligence information. Intelligence assessments from the late 1990s through early 2003 consistently stated that Iraq retained biological warfare agent and the capability to produce more. Assessments on the mobile facilities included the production capabilities of those labs, both in terms of type of agent and in amount. Prior to the October 2002 NIE, some intelligence assessments left open the question as to whether Iraq possessed biological weapons or that it was actively producing them, though other assessments did not present such uncertainties. Policymakers did not discuss intelligence gaps in Iraq's biological weapons programs, which were explicit in the October 2002 NIE.*

Amendment 58 – **Strike** *Prior to the October 2002 NIE, some intelligence assessments left open the question as to whether Iraq possessed biological weapons or that it was actively producing them, though other assessments did not present such uncertainties. Policymakers did not discuss intelligence gaps in Iraq's biological weapons programs, which were explicit in the October 2002 NIE.*

Comments – We do not think that the report has given any examples of intelligence assessments prior to the 2002 NIE which "left open the question as to whether Iraq possessed biological weapons or that it was actively producing them" except the 2000 ICA, which was published more than two years before the policymakers' statements were made and before any of them entered office. In addition, we do not believe there were any intelligence gaps articulated in the October 2002 NIE about Iraq's BW program, with the possible exception of a lack of understanding of the specifics about the types of weapons and biological agents that analysts stated were in the possession of the Iraqi government. If the report drafters think there are such gaps they should be described in the report.

Amendment 59(a)

Page 28, Postwar Intelligence, entire section

Amendment 59(a) – **Strike** the postwar findings section.

Comment - We do not believe that postwar findings are in any way relevant to whether policymakers' statements made prior to the war were substantiated by intelligence available at the time. This information was already reported in another Phase II report, is unnecessary, and is likely to confuse readers who may think statements are unsubstantiated if they turned out to be wrong.

[redacted]

Amendment 68

Page 37-38, Conclusions - ***Conclusion 4: Statements by the President and Vice President prior to the October 2002 National Intelligence Estimate regarding Iraq's chemical weapons production capability and activities did not reflect the intelligence community's uncertainties as to whether such production was ongoing.*** *The intelligence community assessed that Saddam Hussein wanted to have chemical weapons production capability and that Iraq was seeking to hide such capability in its dual use chemical industry. Intelligence assessments, especially prior to the October 2002 NIE, clearly stated that analysts could not confirm that production was ongoing.*

Amendment 68 – **Strike** the above conclusion and **insert** **Conclusion 4: Statements by senior policymakers regarding Iraq's chemical weapons production capability and activities were all substantiated by intelligence information.**

[redacted] Comment – We dispute several of the contentions in this conclusion. The intelligence community assessed both before and after the NIE that Iraq had a chemical weapons production capability, not just that Saddam wanted one. (See the CIA SEM Dec 2001 – "Iraq in the past several years has rebuilt a covert chemical weapons production capability by reconstructing dual-use industrial facilities and developing new chemical plants . . . .") Most of the assessments which judged that actual production was ongoing were contemporaneous with the NIE or slightly prior (see Tenet's testimony to the Senate Armed Services Committee and SSCI below and the unclassified White Paper), but not all of them. More importantly, prior to the production of the NIE, no policymakers said that production was ongoing. If the report concludes that such statement is not substantiated, the report should clearly identify it so that it can be analyzed.

- We assess that Iraq retains a stockpile of at least 100 tons of agent . . . Moreover, Iraq is rebuilding former chemical weapons facilities, developing plants, and trying to procure chemical warfare-related items covertly . . . Based on these construction and procurement activities, we assess that Iraq has a covert chemical weapons production capability embedded in its civilian industry. *Tenet testimony before SASC and SSCI, September 16, 2002.*
- The main production building at Iraq's Fallujah III chemical plant appears to have resumed operation, according to [redacted] . . . The Intelligence Community suspects this site supports production of CW precursors as well as the biological warfare agent ricin, extracted from castor oil beans. *INR, Iraq: Suspect CBW Production Facility Active, November 5, 2001.*

[redacted]

[redacted]

Amendment 69

Page 38, Postwar Findings section

Amendment 69 – **Strike** the postwar findings section.

Comment - We do not believe that postwar findings are in any way relevant to whether policymakers' statements made prior to the war were substantiated by intelligence available at the time. This information was already reported in another Phase II report, is unnecessary, and is likely to mislead readers who might think statements are unsubstantiated if they turned out to be wrong.

Amendment 70

Page 40, second full paragraph, (Scope Note) ***Scope Note:*** *The term 'weapons of mass destruction' (or 'WMD') is commonly used to refer collectively to nuclear, biological and chemical weapons.*

Amendment 70 – **Strike** the scope note paragraph and **insert** According to the October 2002 Iraq WMD White Paper, Iraq's biological, chemical, ballistic missile, and nuclear weapons programs were collectively referred to as weapons of mass destruction (WMD)

Comment/Suggestion – We disagree that the intelligence community's use of the term "WMD" excluded ballistic missiles and other WMD delivery vehicles. The Iraq WMD White Paper (or unclassified NIE) specifically states, "The Gulf war damaged Saddam Husayn's biological, chemical, ballistic missile, and nuclear weapons programs, collectively referred to as weapons of mass destruction (WMD)." The 2002 classified NIE on Iraq's WMD programs included four categories including delivery systems. The report's definition of what is included in the term WMD is incorrect and should include delivery systems. While this report's inclusion of the DOD's definition of WMD is interesting, this report is examining intelligence community judgments, not DOD's. What matters is what the intelligence community included in defining WMD in 2002 which, the above reference to the NIE and White Papers makes clear, included delivery systems.

[redacted]

[redacted]

Amendment 71 and 71(a)

Page 40, last full paragraph - *In the Vice President's August 2002 speech on Iraq, he stated that "there is no doubt that Saddam Hussein now has weapons of mass destruction," and that "there is no doubt he is amassing them". He also quoted a former Secretary of State referencing "the imminence of proliferation of weapons of mass destruction" with regard to Iraq as evidence that preemptive action was necessary.*

*As noted, the term 'weapons of mass destruction' is commonly used to refer collectively to nuclear, biological and chemical weapons. The intelligence community never assessed that Iraq possessed nuclear weapons.*

Amendments 71 – **Strike** *He also quoted a former Secretary of State referencing "the imminence of proliferation of weapons of mass destruction" with regard to Iraq as evidence that preemptive action was necessary.*

Amendment 71(a) - **Strike** *As noted, the term 'weapons of mass destruction' is commonly used to refer collectively to nuclear, biological and chemical weapons. The intelligence community never assessed that Iraq possessed nuclear weapons.*

Comments – We have several comments about these paragraphs: (1) Again, as stated above and as defined by the IC, the term WMD also includes delivery systems; (2) It seems that the report is actually trying to show that the Vice President misrepresented the intelligence because he used the collective term WMD rather than specifically stating biological, chemical weapons and the means to deliver those weapons. The Vice President clearly said in the speech that Iraq was working on developing nuclear weapons—which shows there was no effort to include nuclear weapons among the WMD he said Iraq had; and (3) The use of a collective term does not indicate that all elements of that term must exist for the term to be true and the intelligence community regularly uses the term WMD to refer to some WMD elements. For example:

- Tenet's Threat Hearing testimony said: "Intelligence reporting on Saddam's intentions to use WMD is clear and consistent . . . ."
- CIA/NESA PC briefing book points stated that "Iraq's activities since 1998 clearly show that it has repaired and expanded dual-use WMD facilities, increased WMD production capabilities, and advanced clandestine production and procurement."
- Tenet testimony for SASC/SSCI "Thus, experience shows that his regime will maintain weapons of mass destruction for use, not just deterrence" and "Saddam will never end his pursuit and possession of weapons of mass destruction" and Saddam "may decided that the extreme step of assisting the Islamist terrorists in conducting a WMD attack against the United States would be his last chance . . . ."
- August 10, 2001 CIA assessment, Developing Biological Weapons as a Strategic Deterrent, stated that "Iraq is attempting to address its regional security concerns by developing weapons of mass destruction and is focusing on biological warfare (BW) agents as a strategic deterrent . . . ."

[redacted]

[redacted]

Amendments 81-82

[redacted] Page 48, third non-bullet paragraph - *The Iraqi regime was known to have constructed underground facilities for a variety of purposes, but the intelligence community was not aware of any large, deeply-buried facilities. US intelligence analysts suspected that the regime might be using underground facilities to conceal weapons activities, and there was some unconfirmed reporting that suggested this, but no intelligence agency claimed to know the location of any active underground WMD facilities, and none expressed certainty that such facilities existed. The Defense Intelligence Agency assessed in 2001 that "elements of the regime's weapons of mass destruction (WMD) and ballistic missile programs probably are located in underground facilities", but noted that "*[redacted] *nor intelligence sources have confirmed any WMD- or ballistic missile related underground facilities." An August 2002 DIA report noted that "Iraq has reportedly rebuilt its full offensive BW program in well-concealed, underground, mobile or difficult-to-locate facilities" but went on to state that "no biological weapons (BW)-related underground facilities are currently confirmed to be in use in Iraq".*

Amendment 81-82 – **Strike** the above paragraph and **insert**
[redacted] The intelligence community had long assessed that the Iraqi regime had hardened or underground WMD storage facilities and WMD facilities disguised as civilian installations both to impede detection by inspectors and intelligence services and to protect facilities from air attack. Intelligence agencies assessed that Iraq had deeply buried underground facilities but had not identified any of these facilities.[204] The Defense Intelligence Agency assessed in 2001 that "elements of the regime's weapons of mass destruction (WMD) and ballistic missile programs probably are located in underground facilities," noting that "numerous reports before and after DESERT SHIELD/STORM mentioned the existence of nuclear, biological, chemical, and ballistic missile, production and storage sites that were shallow buried UGFs or, in a few instances, even deep underground facilities. The assessment also noted that "[redacted] nor intelligence sources have confirmed any WMD- or ballistic missile related underground facilities." An August 2002 DIA report also discussed reports of shallow and deeply buried biological warfare facilities. The report said that "despite these many seemingly credible reports and [redacted], no functioning biological weapons (BW)-related underground facilities are currently confirmed to be in use in Iraq".[205]

Comment – Despite fixes made to this paragraph based on our earlier comments, as drafted it still is far more dismissive of the intelligence community's assessments of underground facilities than the assessments themselves were. The reports should use the language used in the analytic papers.

[204] NIC, Denial and Deception NIE, 1998
[205] DIA, *Iraq: Chemical Warfare Program Handbook*, December 14, 2001; DIA, *Iraq: Biological Warfare Program Handbook*, August 2002.

[redacted]

[redacted]

Amendment 83

Page 48, last paragraph – page 49, first paragraph - *In November 2002, the National Intelligence Council noted, in an assessment prepared in response to a request from the Secretary of Defense, that "all the military and regime-associated UGFs [underground facilities] we have identified thus far are vulnerable to conventional, precision-guided, penetrating munitions because they are not deeply buried".*

Amendment 83 – **strike** the above paragraph

Comment – The November 2002 NIE was published two months after the Secretary spoke and is therefore irrelevant to what he said. In addition, only select information was taken from this NIE which gives a distorted picture of what the NIE said. The following relevant information was excluded:

- "To date, the Community has located over 490 Iraqi operational UGFs associated with the military or the regime.
- "We assess that Iraq has some large, deeply buried UGFs, but, because of the Iraqi denial and deception (D&D) program, we have not been able to locate any of these.
- "All the military and regime-associated UGFs [underground facilities] we have identified thus far are vulnerable to conventional, precision-guided, penetrating munitions because they are not deeply buried.
- "The number of UGFs identified and the suspected number of UGFs still unlocated pose problems for effective operations of any UN inspection regime."[206]

[206] National Intelligence Council, *Implications of Iraqi Underground Facilities for US National Security*, November 2002.

[redacted]

[redacted]

Amendment 85

Page 49-50, conclusions - ***Conclusion 5: Statements by the President, Vice President, Secretary of State and Secretary of Defense regarding Iraq's possession of weapons of mass destruction were generally substantiated by intelligence information, though many statements made regarding ongoing production prior to late 2002 reflected a higher level of certainty than the intelligence judgments themselves.***
*Many senior policymaker statements in early and mid-2002 claimed that there was no doubt that the Iraqi government possessed or was producing weapons of mass destruction. While the intelligence community assessed at this time that the Iraqi regime possessed some chemical and biological munitions, most reports produced prior to fall 2002 cited intelligence gaps regarding production and expressed room for doubt about whether production was ongoing. Prior to late 2002, the intelligence community did not collectively assess with any certainty that Iraq was actively producing any weapons of mass destruction.*

Amendment 85 – **strike** *generally* and **strike** everything after *information*

Comment – We disagree with the use of the term "generally," because all of the statements were substantiated by the intelligence. Furthermore, the lack of identifying information about exactly which policymakers' statements were viewed by the authors as reflecting a higher degree of certainty than the intelligence judgments makes it impossible for us to challenge the assertion (which we believe we could if the specific statements were identified). The conclusion is incorrect in asserting that there were "many statements regarding ongoing production prior to late 2002." This is simply false. None of the statements from this time period mentioned ongoing production at all. It is also false to state that "many senior policymaker statements in early and mid-2002 claimed that there was no doubt" about Iraq's possession of WMD. Only one policymaker used the term "no doubt" during this time period and it was in August 2002, not early 2002. This type of careless review certainly will be noticed by the readers of the report and harms the credibility of the Committee. We disagree with the comment that prior to 2002 the intelligence community "expressed room for doubt" about whether Iraq possessed chemical and biological munitions and believe, even if it were true, assessments prior to 2002 are irrelevant to what policymakers said in late 2002. We also disagree with including the comment that the intelligence community did not "collectively" assess that Iraq was actively producing any WMD. Whether the intelligence community had a "collective" judgment is irrelevant. The task of this report is not to look at only collective judgments; it is to examine available intelligence.

[redacted]

[redacted]

Amendment 86

Page 50, conclusions - ***Conclusion 6: The Secretary of Defense's statement that the Iraqi government operated underground WMD facilities that were not vulnerable to conventional airstrikes was not substantiated by available intelligence information.***
*While many intelligence analysts suspected that the Iraqi government might be using underground facilities to conceal WMD activities, no active underground WMD facilities had been positively identified. Furthermore, none of the underground government facilities that had been identified were buried deeply enough to be safe from conventional airstrikes.*

Amendment 86 – **Strike** the above conclusion and **insert Conclusion 6: The Secretary of Defense's statement that Iraqi WMD facilities were not all vulnerable to attack from the air was substantiated by available intelligence information.**

Comment – First, the Secretary did not say "conventional" airstrikes, he said that sites "were not all vulnerable to attack from the air." No intelligence assessments prior to the Secretary's statement said that "none of the underground WMD facilities that had been identified were buried deeply enough to be safe from conventional airstrikes." Furthermore, the Secretary was not only talking about facilities that were vulnerable due to being deeply buried. He also discussed facilities that were believed to have been located near mosques, schools, and hospitals which made them "not vulnerable" to airstrikes unless we were willing to possibly strike those civilian facilities.

Amendment 87

Page 50, postwar findings

Amendment 87 – **strike** this section.

Comment - We do not believe that postwar findings are in any way relevant to whether policymakers' statements made prior to the war were substantiated by intelligence available at the time. This information was already reported in another Phase II report, is unnecessary, and is likely to confuse readers who may think statements are unsubstantiated if they turned out to be wrong.

[redacted]

[redacted]

Amendment 90

Page 54, third paragraph - *Intelligence assessments regarding UAVs shifted after the October 2002 NIE. A subsequent NIE, Nontraditional Threats to the US Homeland Through 2007, published in January 2003, did not describe Iraq's UAV program as "probably intended" for biological weapons delivery, and instead stated that "Iraq may be modifying UAVs" for CBW delivery. This NIE also noted that Iraqi UAVs could reach the United States, if they were transported (in some unspecified manner) "to within a few hundred kilometers."*

Amendment 90 – **strike** the above paragraph and the next two paragraphs.

Comment – We do not believe that a document published in January, three months after the President made the speech should be analyzed in this section. It is not relevant to what the President said in October and, even if it were, the Threats to the Homeland NIE expressed the same concerns that the President addressed in his speech, that the UAVs could be used to target the Homeland. Additionally, the NIE used the term "strike" the Homeland, not "reach" the Homeland.

[redacted]

[redacted]

Amendment 96

Page 57-58 - ***Conclusion 8: Statements by the President, Secretary of Defense and Secretary of State that Iraq was developing unmanned aerial vehicles (UAVs) that could be used to deliver chemical or biological weapons were generally substantiated by intelligence information, but did not convey the substantial disagreements or evolving views that existed in the intelligence community.***
*The majority view of the October 2002 National Intelligence Estimate judged that Iraq had a UAV program that was intended to deliver biological warfare agents. Air Force intelligence dissented from this view, and argued that the new UAV was probably being developed for reconnaissance. The majority view of the January 2003 NIE said that Iraq "may" be modifying UAVs for chemical or biological weapons, and the Air Force, Army and Defense Intelligence Agency argued that the evidence for this was "not sufficiently compelling to indicate that the Iraqis have done so."*

Amendment 96 – **strike** *generally*; **strike** ***but did not convey the substantial disagreements or evolving views that existed in the intelligence community.***
*The majority view of the October 2002 National Intelligence Estimate judged that Iraq had a UAV program that was intended to deliver biological warfare agents. Air Force intelligence dissented from this view, and argued that the new UAV was probably being developed for reconnaissance. The majority view of the January 2003 NIE said merely that Iraq might be modifying UAVs for chemical or biological weapons, and the Air Force, Army and Defense Intelligence Agency argued that the evidence for this was unpersuasive.* and **insert** All intelligence agencies assessed that Iraq's UAVs could be used for CBW delivery.

Comments – Again, we disagree with the terms "generally" and we disagree that there was any disagreement within the intelligence community about whether the UAVs "could" be used to deliver CBW as the conclusion states. All agencies agreed that the UAVs could be used to deliver CBW, which is all that policymakers said. We further note that the Air Force dissent on the intended use of the UAVs was not included in the President's summary of the NIE.

[redacted]

Amendment 97

Page 58 - ***Conclusion 9: The President's suggestion that the Iraqi government was considering using UAVs to attack the United States was substantiated by intelligence judgments available at the time, but these judgments were revised a few months later, in January 2003.***
*The October 2002 National Intelligence Estimate noted that an Iraqi procurement network had attempted to purchase commercial mapping software that included data on the United States, and suggested that the Iraqi government was considering using UAVs to target the US. The January 2003 NIE revised this claim, and said only that the software could be used for this purpose. The Air Force, Army and Defense Intelligence Agency dissented from this judgment as well, and argued that the purpose of the Iraqi request was to acquire a generic mapping capability.*

Amendment 97 – **strike** ***but these judgments were revised a few months later, in January 2003.*** **strike** *and suggested* and **insert** which the IC said suggested; **strike** *The January 2003 NIE revised this claim, and said only that the software could be used for this purpose. The Air Force, Army and Defense Intelligence Agency dissented from this judgment as well, and argued that the purpose of the Iraqi request was to acquire a generic mapping capability.*

Comment – We believe it is irrelevant whether the judgment later changed. This report is supposed to determine whether statements were substantiated by the intelligence policymakers had when they made the statement, not intelligence that came out later. Additionally, the President said "we are concerned that Iraq is exploring ways of using these UAVs for missions targeting the United States." This statement is not inconsistent with the NIE published in January. The IC remained concerned about this possibility.

Amendment 98

Page 58, Postwar findings – entire postwar findings section

Amendment 98 – **strike** this section.

Comment - None of the postwar findings have citations so we cannot check their accuracy. Even with citations, we do not believe that postwar findings are in any way relevant to whether policymakers' statements made prior to the war were substantiated by intelligence available at the time. This information was already reported in another Phase II report, is unnecessary, and is likely to confuse readers who may think statements are unsubstantiated if they turned out to be wrong.

[redacted]

[redacted]

Amendment 99

Page 62, fifth paragraph - *Finally, the President stated that Saddam Hussein was "harboring terrorists and the instruments of terror, the instruments of mass death and destruction." While this statement was not specific to any group, the placement in the speech and the context suggests that the President was stating that Hussein was harboring al Qaeda. The statement appeared two paragraphs after statements that "...Iraq and the al Qaeda terrorist network share a common enemy," that some "al Qaeda leaders who fled Afghanistan went to Iraq," and that "Iraq has trained al Qaeda members in bomb-making and poisons and deadly gases." (These statements are discussed elsewhere in this report.) The President's statement came in the same paragraph as the statement "confronting the threat posed by Iraq is crucial to winning the war on terror."*

Amendment 99 – **Strike** the above paragraph after the first sentence.

Comment – We do not believe the President ever stated or implied that Saddam Hussein was harboring al-Qa'ida. In the referenced text he spoke specifically about harboring non-al-Qa'ida groups. We think it is stretching this project too far to not only purport to be the judge and jury of what policymakers said, but also what staff believes they "suggested" or "implied."

Amendment 106

Page 65, third paragraph - *The September 2002 CIA report Iraqi Support for Terrorism, which was coordinated with the DIA, stated that al-Libi said Iraq had "provided" unspecified CBW training for two al-Qa'ida associates in 2000, but also stated that al Libi "did not know the results of the training."*

Amendment 106 –after the sentence above **insert** Another version of the paper provided to the Committee with the same date did not include the comment that al-Libi "did not know the results of the training." The Committee did not ask why there were two versions of this paper and did not ask whether one or both versions were sent to the White House.

Comment - The Committee needs to get an answer about why there were two reports and find out whether both of them were disseminated. The report also should include the comments from both versions, not choose the one that best supports the point the authors are trying to make.

[redacted]

Amendment 108

Page 65, last paragraph – *Months prior to the speech and in the latter intelligence products cited above, questions were raised in finished intelligence about al-Libi's credibility.*

Amendment 108 – **insert** a new paragraph before the discussion of the State of the Union which says the following:
Despite these issues, when the White House submitted the speech for CIA fact checking and sources and methods clearances, a CIA staff member told the DCI in writing that the CIA analyst had "read all the terrorism paragraphs and said it was all okay."(emphasis original) (all okay should be underlined.)

Comments - We know that this speech was fact checked by the CIA and we have this handwritten comment which shows that the CIA approved the language in the terrorism section. This should be stated in the report

[redacted]

[redacted]

Amendment 119

Page 71, conclusions - ***Conclusion 12: Statements and implications by the President and Secretary of State suggesting that Iraq and al-Qa'ida had a partnership, or that Iraq had provided al-Qa'ida with weapons training, were not substantiated by the intelligence.*** *Intelligence assessments, including multiple CIA reports and the November 2002 NIE, dismissed the claim that Iraq and al-Qa'ida were cooperating partners. According to an undisputed INR footnote in the NIE, there was no intelligence information that supported the claim that Iraq would provide weapons of mass destruction to al-Qa'ida. The credibility of the principal intelligence source behind the claim that Iraq had provided al-Qa'ida with biological and chemical weapons training was regularly questioned by DIA, and later by the CIA. The Committee repeats its conclusion from a prior report that "assessments were inconsistent regarding the likelihood that Saddam Hussein provided chemical and biological weapons (CBW) training to al-Qa'ida."*

Amendment 119 – **strike** the above conclusion and **insert**
**Conclusion 12: Statements by the President and Secretary Powell that Iraq had provided al-Qa'ida with weapons training were supported by the intelligence. Numerous intelligence assessments stated that Iraq had provided al-Qa'ida with weapons training and specifically training in poisons and gases. While some DIA reports raised questions about the credibility of this reporting and one CIA report noted that the source may have exaggerated his reporting in a separate area, the CIA did not raise questions about the source's weapons training reporting and, in fact, provided and approved the use of this language in both the President's and Secretary's remarks.**

Comments - None of the statements provided in this report suggested or implied that Iraq and al-Qa'ida had "partnership." Additionally, while there were policymakers who commented that Iraq had provided al-Qa'ida with weapons training, those comments were fully supported by the intelligence. The al-Libi reporting on CBW training was never questioned by the CIA and the information was approved by the CIA for use in both the President's Cincinnati speech and Powell's UN speech. In the case of the Powell speech CIA actually provided the information to him to use in the speech in the draft of the speech the CIA wrote. Furthermore, the conclusion as drafted says that intelligence community "assessments were inconsistent" so accordingly, how can the Committee judge policymakers to not have any statements substantiated by the intelligence?

[redacted]

[redacted]

Amendment 120

Page 71, conclusions - ***Conclusion 13: Statements in the major speeches analyzed, as well additional statements, regarding Iraq's contacts with al-Qa'ida were substantiated by intelligence information. However, policymakers' statements did not accurately convey the intelligence assessments of the nature of these contacts, and left the impression that the contacts led to substantive Iraqi cooperation or support of al-Qa'ida.***

Amendment 120 – **strike** ***However, policymakers' statements did not accurately convey the intelligence assessments of the nature of these contacts, and left the impression that the contacts led to substantive Iraqi cooperation or support of al-Qa'ida.***

Comments - We disagree that policymakers' statements did not accurately convey the nature of the contacts or left the impression that the contacts led to substantive Iraqi cooperation. Policymaker comments throughout this section nearly exactly matched what the intelligence community said about contacts. No policymaker implied that the contacts led to any Iraqi support of al-Qa'ida other than the safehaven, training, reciprocal non-aggression, which is well documented in numerous intelligence assessments. Furthermore, the comments from many of the policymakers outlined in the section were factchecked by the CIA. The report should identify the policymakers and the specific statements that are judged to be misleading so that we can analyze those statements.

Amendment 121

Page 72, conclusions - **Conclusion 14. The Intelligence Community did not confirm that Muhammad Atta met an Iraqi intelligence officer in Prague in 2001.**

Amendment 121 – **strike** the above conclusion

Comments - At the time that the Vice President commented that "it's been pretty well confirmed that [Atta] did go to Prague and he did meet with a senior official of the Iraqi intelligence service" a CIA assessment said, "The Czech Government last week publicly confirmed that suspected hijacker Muhammad Atta met with former Iraqi station chief Ahmad Khalil Ibrahim Samir al-Ani in Prague before al-Ani's expulsion from the Czech Republic last April. Al-Ani and Atta met during 8-9 April in Prague, according to a foreign government service." (Emphasis added.)

[redacted]

Amendment 122

Page 72, Postwar findings – entire section

Amendment 122 – **strike** all postwar findings

Comment - None of the postwar findings have citations so we cannot check their accuracy. Even with citations, we do not believe that postwar findings are in any way relevant to whether policymakers' statements made prior to the war were substantiated by intelligence available at the time. This information was already reported in another Phase II report, is unnecessary, and is likely to confuse readers who may think statements are unsubstantiated if they turned out to be wrong.

Amendment 125

Page 74, first non-bullet paragraph - *In major policy speeches the President, the Vice President and the Secretary of State all discussed Iraq's intentions regarding weapons of mass destruction. Both the President and the Vice President indicated that Saddam Hussein was prepared to share weapons of mass destruction with terrorist groups.*

Amendment 125 – **strike** the above sentence.

Comment/suggestion –None of these individuals discussed Iraq's "intentions" regarding WMD or anything else. Both the President and the Vice President expressed concern that Saddam could share WMD with terrorists, not that he intended to do so and they did not say or "indicate" that he was "prepared" to do so.

[redacted]

[redacted]

Amendment 126

Page 74, second – fourth full paragraphs –

*(U) In the Vice President's August 2002 speech on Iraq, he discussed "the case of Saddam Hussein", and indicated that Saddam was "prepared to share [weapons of mass destruction] with terrorists who intend to inflict catastrophic casualties on the United States."*

*(U) At the time of the Vice President's speech, the intelligence community did not assess that Saddam Hussein was prepared to share weapons of mass destruction with terrorists. The intelligence community had previously assessed that Saddam was interested in acquiring WMD to deter hostile foreign powers (including Israel, Iran, and the US-led Coalition) and as a means of achieving "regional preeminence."*

*(U) The intelligence community had also assessed that Saddam was unlikely to take actions that he believed would threaten the survival of his regime, and that he believed hostile actions such as a re-invasion of Kuwait would in fact threaten his regime's survival.*

Amendment 126 – **strike** the above three paragraphs and **insert** In the Vice President's August 2002 speech on Iraq, he discussed the threat of al-Qa'ida's pursuit of weapons of mass destruction. He noted that Cold War doctrines do not apply in this scenario, noting that "containment is not possible when dictators obtain weapons of mass destruction and are prepared to share them with terrorists who intend to inflict catastrophic casualties on the United States." Specifically regarding Iraq "armed with an arsenal of these weapons of terror" he said, "Saddam Hussein could then be expected to seek domination of the entire Middle East, take control of a great portion of the world's energy supplies, directly threaten America's friends throughout the region, and subject the United States to any other nation to nuclear blackmail."

Comment – The Vice President did not say that Saddam was "prepared to share WMD with terrorists," nor did he indicate as much. The report should analyze what he said, not the drafters' interpretation of his comments. The VP was talking about al-Qa'ida pursuing WMD and said that Cold War doctrines of deterrence and containment do not work against these kinds of enemies. He said "containment is not possible when dictators obtain weapons of mass destruction, and are prepared to share them with terrorists who intend to inflict catastrophic casualties on the United States." He then went on in the next paragraph separately to discuss the case of Saddam Hussein. The report should not say that he said something about Saddam when he never even mentioned Saddam at all.

[redacted]

[redacted]

Amendment 127

Page 75, last three paragraphs – *In the President's September 2002 speech to the United Nations General Assembly, he stated that Saddam Hussein was a "grave and gathering danger", and that to assume Saddam's good faith would be tantamount to betting "the lives of millions and the peace of the world in a reckless gamble."*

*The President also implied that the Iraqi regime was dangerous because it might provide weapons of mass destruction to terrorists ("And our greatest fear is that terrorists will find a shortcut to their mad ambitions when an outlaw regime supplies them with the technologies to kill on a massive scale. In one place -- in one regime – we find all these dangers....")*

*The intelligence community did not assess that Saddam Hussein dealt with other countries in good faith and assessments regarding the potential use of WMD were not based on assumptions of good faith. As discussed, the 1999 NIE on Iraqi military capabilities noted that it was difficult to gauge Saddam's intentions, but judged that he would be careful not to put his regime's survival at risk.*

Amendment 127– **Strike** *In one place – in one regime – we find all these dangers....")*; **Strike** *The intelligence community did not assess that Saddam Hussein dealt with other countries in good faith and assessments regarding the potential use of WMD were not based on assumptions of good faith.* and **insert** In a December 15, 2001 assessment titled *The Iraqi Threat*, the CIA said "Saddam sees himself as a pan-Arab leader and views his regime as the most glorious chapter in Iraqi history . . . His decision-making is guided by opportunism, distrust of others, a personal need for power, and the sense that he is an historic figure who must take bold risks to advance Iraq's interests. He views state power primarily in military terms—twice launching wars against his neighbors—and his strategic aim is to establish Iraq as the preeminent power in the Persian Gulf."

Comment – The last portion of the comment from the President in the second paragraph above was not referencing Saddam giving weapons to terrorists as the draft suggests. The President had explained several dangers in the previous few paragraphs including poverty and raging disease, ethnic and religious strife, and outlaw groups which accept no law and have no limit to their violent ambitions. These were the dangers he was talking about, but when the comments are taken out of context, that understanding is lost. Also, trying to contradict the President by saying what the intelligence community did not assess is ridiculous. The President did not claim that this was an intelligence community judgment.

[redacted]

[redacted]

Amendment 128

Page 76, first four full paragraphs - *At the time of the President's UN speech, the October 2002 NIE was still being prepared, and was two weeks away from release. While the document itself was not available at this time, its consistency with the 1999 NIE, and the lack of contradictory assessments in the intervening four year period, illustrate the continuity of the intelligence community's judgments on this topic.*

*(U) The October 2002 NIE assessed that "Saddam's past actions suggest that a decision to use WMD probably would come when he feels his personal survival is at stake even after he has exhausted all political, military and diplomatic options". It noted that it the US would be unlikely to know when Saddam felt that he had no other options for self-preservation, but pointed out that "Iraq's methodical conventional defensive preparations also suggest Saddam thinks an attack is not imminent".*[207]

*(U) Additionally, the NIE pointed out that "Iraq's historical use of CW against Iran and its decision not to use WMD against Israel or Coalition forces in 1991 indicates that an opponent's retaliatory capability is a critical factor in Saddam's decisionmaking."*[208]

*(U) The NIE also examined a variety of ways in which Iraq might conceivably use WMD, and noted that overall "we have low confidence in our ability to assess when Saddam would use WMD."*

Amendment 128– **strike** all of the above paragraphs.

Comment – An NIE published after the President's speech is irrelevant.

[207] National Intelligence Estimate, *Iraq's Continuing Programs for Weapons of Mass Destruction*, October 2002.
[208] Ibid.

[redacted]

[redacted]

Amendments 129

Page 76, last paragraph - *While the October 2002 NIE assessed that Iraq possessed chemical and biological weapons, it judged that Saddam was unwilling to conduct terrorist attacks targeting the United States at that time. According to the NIE, "Baghdad for now appears to be drawing a line short of conducting terrorist attacks with conventional or CBW against the United States, fearing that exposure of Iraqi involvement would provide Washington a stronger case for making war."*

Amendment 129 – **strike** this paragraph and the next two paragraphs.

Comment – The NIE did not say that Saddam was unwilling to conduct terrorist attacks targeting the United States at that time. Furthermore, we believe all of this analysis and the analysis in the next two paragraphs are irrelevant and should be deleted. The President was not making a comment about what Iraq was likely to do now, he was specifically talking about the danger of waiting until Saddam had more powerful weapons which could change his calculations about the wisdom of giving WMD to terrorists. Nothing in the intelligence reporting casts doubt on the President's comments that Iraq "could" give WMD to terrorists.

Amendment 130

Page 77, second paragraph - *As discussed elsewhere in this report, in October 2002 most intelligence agencies assessed that Iraq reconstituting a nuclear weapons program. The State Department's Office of Intelligence and Research (State/INR) believed that Saddam Hussein wanted to possess nuclear weapons, and was maintaining some capabilities with dual uses, but judged that the available evidence did "not add up to a compelling case for reconstitution."*

Amendment 130 – after the above start a new paragraph and **insert** In a statement released by the DCI about the President's comment he said, "There is no inconsistency between out view of Saddam's growing threat and the view as expressed by the President in his speech. Although we think the chances of Saddam initializing a WMD attack at this moment are low-in part because it would constitute an admission that he possesses WMD-there is no question that the likelihood of Saddam's using WMD against the United States or our allies in the region for blackmail, deterrence, or otherwise grows as his arsenal continues to build. His past use of WMD against civilian and military targets shows that he produces these weapons to use, not just to deter.

Comment – The statement released by the DCI is relevant in this section and should be included. It explains that the President's comments were consistent with the intelligence at the time and that the President and the intelligence in question were discussing two different things. We believe it also illustrates why the entire intent section is a distortion of what the policymakers in question were discussing, which was not Saddam's intent at all.

[redacted]

Amendment 131

Page 77, last two paragraphs – page 78, first two full paragraphs – *As discussed, the October 2002 NIE judged that Saddam Hussein was unwilling to conduct terrorist attacks targeting the United States at that time. More generally, it suggested that Saddam would probably decide to use WMD only if he felt he had no other options for survival and that "an opponent's retaliatory capability" would be a key factor in making this decision.*

*A November 2002 NIE on nontraditional threats restated the October NIE's assessment about Saddam's willingness, if "sufficiently desperate" to employ an outside terrorist group to conduct an attack on the US as his "last chance for vengeance." This NIE included the caveats that the intelligence community had low confidence in this assessments, and that "INR believes that the intelligence community has no reporting to support this assertion."*

*The October 2002 NIE's conclusions were essentially repeated again in a January 2003 Intelligence Community Assessment which said that "Saddam probably will not initiate hostilities for fear of providing Washington with justification to invade Iraq. Nevertheless, he might deal the first blow, especially if he perceives that an attack intended to end his regime is imminent."*

*Neither of these reports specifically focused on what Saddam might do if he had nuclear weapons or a "full arsenal" of chemical and biological weapons, possibly because the intelligence community believed that Iraq was still years away from possessing either of these.*

Amendment 131 – **Strike** the first and last paragraphs above

Comment – The NIE did not say that Saddam Hussein was "unwilling" to conduct terrorist attacks and the President did not say that he would, he said that he could provide a chemical or biological weapon to terrorists.

[redacted]

[redacted]

Amendment 132 and 133

Page 78, third full paragraph –
***Secretary of State's Address to the UN Security Council (February 5, 2003)***
*(U) In the Secretary of State's February 2003 address to the United Nations Security Council, he stated that "ambition and hatred are enough to bring Iraq and al-Qaida together, and that "al-Qaida could turn to Iraq for help in acquiring expertise on weapons of mass destruction."*

Amendment 132 – **insert** before *ambition and hatred* "Some believe, some claim that these contacts do not amount to much. They say Saddam Hussein's secular tyranny and al-Qa'ida's religious tyranny do not mix. I am not comforted by this thought.

Amendment 133 – **insert** a new paragraph after the paragraph in Amendment 132 which says: Several intelligence reports described a mutual antipathy for the United States as a motivation for their contacts and dealings including the following:

- A range of intelligence reports indicates Baghdad and al-Qa'ida have been in contact since at least the mid-1990s. Mutual suspicion has blocked cooperation at various times, but shared antipathy toward the US and the Saudi royal family has provided a potential rationale for cooperation. CIA, SPWR, May 14, 2002
- Iraq's interaction with al-Qa'ida is impelled by mutual antipathy toward the United States and the Saudi royal family and by Bin Ladin's interest in unconventional weapons and relocation sites. In contrast to the patron-client pattern between Iraq and its Palestinian surrogates, the relationship between Saddam and Bin Ladin appears to more closely resemble that of two independent actors trying to exploit each other—their mutual suspicion suborned by al-Qa'ida's interest in Iraqi assistance and Baghdad's interest in al-Qa'ida's anti-US attacks. Jan 2003, Iraqi Support for Terrorism p. 11
- Discerning the reasons for Saddam's contacts and dealings with al Qa'ida is difficult, but his main motivation may be best expressed by the old proverb 'the enemy of my enemy is my friend.' The theme repeated by sources close to various levels of Saddam's regime is that Saddam and Bin Ladin recognized the United States as a common enemy, that Saddam came to see al-Qa'ida as a force to be reckoned with, and that for all their differences and mutual wariness, at various times their interests coincided. – CIA input to Powell speech p.4 also Jan 2003 Iraqi Support for Terrorism
- Shared antipathy toward the US and Saudi Arabia provides possible common ground for cooperation, despite competing ideologies and mutual suspicion.June 25, 2002 SPWR, *Iran-Iraq-Syria: Willingness to Overlook Ideology in Their Relations With Terrorist Groups*

Comment – The report as drafted left off relevant portions of the Secretary's comments and excluded several intelligence reports with direct relevance to the Secretary's comments. These should have been added.

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Amendment 134

Page 78, fourth full paragraph - *The intelligence community did not assess that Iraq and al-Qaida had a cooperative relationship. In June 2002 the CIA compared Iraq and al-Qaida to "rival intelligence services, with each trying to exploit the other for its own benefit." While there was evidence of limited contacts throughout the 1990s, the CIA assessed that these contacts did not add up to an established relationship. In a January 2003 report the CIA noted that "Saddam Husayn and Usama bin Laden are far from being natural partners", and stated that while there was little specific intelligence about Saddam's opinion of al-Qaida, "his record suggests that any such ties would be rooted in deep suspicion."*

Amendment 134– **Strike** the entire paragraph

Comment – Secretary Powell never said that Iraq and al-Qa'ida had a cooperative relationship and the CIA never assessed that "these contacts did not add up to an established relationship." If there is such a document, it should be cited.

Amendment 135

Page 78, last partial paragraph - *As discussed, the October 2002 NIE assessed that Saddam Hussein was unwilling to provide weapons of mass destruction to terrorist groups at that time, because he did not want to put his regime's survival at risk. It noted that information on possible training of terrorists was "second hand, or from sources of varying reliability."*

Amendment 135 – **Strike** the above paragraph.

Comment – The NIE never used the term "unwilling." Furthermore, Secretary Powell's entire UN speech was checked by the intelligence community, and some areas were actually drafted by the CIA. Obviously the intelligence community believed it was substantiated by intelligence because they approved it.

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Amendment 136

Page 82, conclusions - ***Conclusion 15: Statements by the President and Vice President indicating that Saddam Hussein was prepared to give weapons of mass destruction to terrorist groups for attacks against the United States were contradicted by available intelligence information.*** *The October 2002 National Intelligence Estimate assessed that Saddam Hussein did not have nuclear weapons, and was unwilling to conduct terrorist attacks the US using conventional, chemical or biological weapons at that time, in part because he feared that doing so would give the US a stronger case for war with Iraq. This judgment was echoed by both earlier and later intelligence community assessments. All of these assessments noted that gauging Saddam's intentions was quite difficult, and most suggested that he would be more likely to initiate hostilities if he felt that a US invasion was imminent.*

Amendment 136 – **Strike** the above conclusion

Comment – All of the claims in this paragraph are false. Neither the President nor Vice President said or indicated that Saddam "was prepared to give WMD to terrorist groups for attacks on the US." Furthermore, the intelligence community made no assessments about whether Iraq "could" give WMD to terrorists, so the only intelligence information that could be compared to these statements is whether the intelligence community assessed Iraq had such weapons to give, which the intelligence community did. The statement that the NIE said Iraq was "unwilling" to conduct terrorist attacks is false. The NIE never said that. This judgment was not echoed in earlier assessments at all.

Amendment 137

Pages 73-83, Intent section

Amendment 137 – **Strike** the entire intent section

Comment – As discussed in several previous amendments, we believe the intent section as a whole is distorting what policymakers were arguing at the time. They were not arguing that Saddam "intended" to do any of the things they were discussing, the argument was that, after September 11, we must refocus the debate on what Saddam could do. The intelligence community had low confidence in its judgments of Saddam's intent which bolstered the case of policymakers that, in light of such uncertainty, the focus needs to be on capabilities.

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Amendment 138

Page 82-83, Postwar findings – entire section

Amendment 138 – **Strike** the postwar findings section.

Comment - We do not believe that postwar findings are in any way relevant to whether policymakers' statements made prior to the war were substantiated by intelligence available at the time. This information was already reported in another Phase II report, is unnecessary, and is likely to mislead readers who may think statements are unsubstantiated if they turned out to be wrong.

Amendment 140

Pages 84-88, Post-War Iraq section

Amendment 140 – **Strike** the Post-War Iraq section

Comments - This entire section is comparing apples to oranges. It compares statements made by policymakers discussing their opinions about postwar Iraq to intelligence unrelated to the comments made. In one case the Vice President quotes a Middle East expert, yet that comment too, according to the draft, must be substantiated by intelligence. We simply cannot expect policymakers to have their comments comport with intelligence even when their comments have nothing to do with intelligence.

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**MINORITY VIEWS OF SENATOR WARNER**

I agree with many of the points made in the minority views of Senators Bond, Hatch, Chambliss, and Burr about the conduct and the content of this portion of the Committee's Iraq review effort. I offer these views to focus on the issues which I believe are the most significant and troubling problems with the two reports released today. These concerns should be of no surprise to the Committee Chairman, or any of the Members who attended the business meeting to vote on these so-called Phase II reports, as I have made these points before.

I am disappointed that the Committee missed an opportunity to have the staff work out many of the remaining problems with these reports. Staff from both sides of the aisle had commented that progress was being made and that more progress was possible, and, in fact likely, if there had been time allotted to that end. It is unfortunate that such time was not provided because many of the factual problems that remain in the reports may have been corrected. Instead, in the form voted on by a majority of my colleagues, the reports contain numerous inaccuracies, lack complete information, and are not reports that I could support. These inaccuracies are explained in detail in the appendix of amendments attached to the Vice Chairman's minority views.

It is more disappointing that a motion offered by the Vice-Chairman—one I considered exceedingly important—was not given a vote or full consideration during the business meeting. The motion called for those individuals who are alleged in the reports to have made statements that were not substantiated by intelligence or to have otherwise failed in their duties, be afforded the opportunity to come before the Committee to have the opportunity to comment. In the spirit of fairness and full disclosure, these individuals should have been called to meet with the Committee long before the Chairman scheduled a vote on these reports. I believe the failure to do so was unjust to the individuals in question.

One of the most fundamental tenets in our great Republic is the opportunity to confront one's accuser. While the Senate Select Committee on Intelligence is certainly not a court of law, these reports will undoubtedly be released to the public and scrutinized, therefore, in the court of public opinion. The individuals who are named in these reports must be afforded the opportunity to be heard about their statements, about the intelligence that was available to them, and to defend themselves if they deem it necessary.

I believe this is particularly important in this case, because as the Vice Chairman's minority views state, the reports as drafted lack important and relevant information. We know, for example, that information provided by the intelligence community for use in Secretary Powell's speech to the United Nations, was knowingly excluded from the report. We have an obligation to ask Secretary Powell about this information and any other information the intelligence community provided of which the Committee may not be aware.

Because I was so concerned about what I consider to be a fundamental issue of fairness, I urged the Committee to contact the individuals named in this report, prior to its release, to allow them to at least reply to what I believe are significant accusations. Although any responses and

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any additional information cannot be incorporated into the reports themselves, the information can at least be made part of the record. While I do not believe this is an acceptable alternative, it will have to suffice.

I have served on this Committee for many years—once as ranking member—and I believe the Committee can best serve the Senate and the public, if we can achieve a high level of bipartisanship. The subject of these reports was a difficult challenge; but, it is behind us now and I will work with all other members to achieve bipartisan solutions in the future.

JOHN WARNER

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**MINORITY VIEWS OF SENATOR CHAMBLISS, VICE CHAIRMAN BOND, AND SENATOR HATCH**

The final two Phase II reports and the process that produced them are a great disappointment. The products are poor and the process that produced them was regrettable. Although the Minority requested to be involved in the production of these reports at the start of the 110th Congress, we were excluded from the drafting of these reports and deprived of any meaningful role in the work that produced them.

We believe the Senate Intelligence Committee, above all others in the Senate, should be a Committee where Members work together absent political agendas for the good of the nation. The process that produced these reports, unfortunately, was not in keeping with that conviction, and we are disappointed with the results. We fully concur with the Vice Chairman's views submitted as an assessment on the substance of the two reports; here, however, we believe it is necessary to make known our disappointment over the process by which they were produced.

On February 12, 2004, the Committee voted to authorize Phase II of this Committee's inquiry regarding the prewar intelligence on Iraq. Many of the Committee Members' votes in support of authorizing Phase II of the investigation were based primarily to facilitate a unanimous consensus in completing the Committee's Phase I report. That report was fair, accurate, and thorough, and proved to be the only substantive and bipartisan portion of this Committee's investigation into the prewar intelligence on Iraq. Since that time, rather than focusing on how to improve our Intelligence Community or placing the full emphasis of our oversight on reforming the Intelligence Community following its reorganization in 2004, the Committee has spent four years looking backwards at past events that had already been examined by the Committee and by a number of independent Commissions. In addition, this latest round of the Committee's Phase II reports and the manner in which they were produced calls into question the integrity of the Committee to act without bias in its oversight role over the Intelligence Community.

*Past Committee Practice*

The handling of these Phase II reports represents a significant departure from past Committee practice. In the Committee's Phase I investigation, staff briefed the Members on a proposed work plan prior to initiating the investigation. Members on both sides of the aisle had an opportunity to request directly that specific areas of concern be investigated and to frame the scope and methodology of the investigation before it even began. At least fifteen times during the staff portion of the investigation, the Members of the Committee met to receive briefings and discuss issues related to the ongoing investigation. Before the Committee scheduled a meeting to adopt the Phase I report, Members had a draft report for over five months which they reviewed and edited, and had the ability to request further information. It was only after at least four additional business meetings of the Committee to discuss the drafts that conclusions were formulated based upon Members' input and the Committee's review of the text. At all times throughout this investigation, the Minority had access to, and provided feedback on, the investigative process. This is not to say that the Minority was happy with every decision the Committee ultimately made, but they were briefed fully, had their concerns addressed either

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through negotiations or amendments, and along with the Majority, they unanimously supported the Committee's report.

During the Committee's first round of Phase II reports in the 109th Congress, the Committee held at least a dozen business meetings to discuss and receive briefings on two drafts—(1) *The Use By the Intelligence Community of Information Provided by the Iraqi National Congress* and (2) *Postwar Findings about Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments*. Members had an opportunity to propose additions to the reports and to draft conclusions over a period of ten months before reporting them out of Committee. During these discussions, Minority concerns and suggestions were responded to and addressed, including requests for interviews and documents. In some instances, at the request of the Minority, information was even incorporated into the reports which was not required by the terms of reference for the inquiry in order to achieve comity among the Members of the Committee.

*Current Phase II Reports*

Unfortunately, the process by which the current Phase II reports were drafted did not conform even remotely to the Committee's previously bipartisan process. From the time the new Democrat Majority resumed the Phase II effort last year, Minority Members and Minority staff were excluded from the process. Several Majority staff were assigned to produce the two drafts, and numerous requests from the Minority were denied, including requests to address scope problems, requests to conduct necessary interviews, and requests to include additional information. The Majority even denied the Minority access to the draft reports until *two months* after the Majority had reviewed them. We believe that working together from the start would have precluded any significant disagreement over the scope, method, and procedure for producing these reports. As it turned out, we had very little input into these drafts and were not allowed adequate time to review and comment on them.

The Minority was provided with the draft reports on January 15, 2008—reports which *included staff drafted Committee conclusions*. This was particularly disappointing to us because we believe that elected members of the Senate, not a few majority staff, should be forming the final conclusions on whether the highest officials of the Republic acted appropriately with regard to pre-war intelligence. At the first Committee meeting on Phase II, action on the drafts was postponed and no substantive discussion of the drafts occurred; from the time the drafts were circulated to Committee Members to their adoption on April 1, 2008, the Committee did not hold one business meeting where the substance of the reports was addressed. This stands in stark contrast with past Committee practice.

For example, in late 2005, Chairman Rockefeller, Senator Levin, and Senator Feinstein wrote to the Senate leadership stating that during the Committee's Phase I review the "Committee members and staff were given reasonable opportunities to review the draft sections of the report *early in the process* and to provide input and suggest changes to the report" (emphasis added). The letter added that the "Phase II investigation is an equally substantial task, and it is important for the Committee to approach it with the same process." Unfortunately, this inclusive process was not followed by those who earlier had prescribed it.

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*Adoption of the Reports*

If Chairman Rockefeller had conducted the current investigation according to the framework he insisted upon in his 2005 letter, we would have few objections to this process. Due to the little input that we were allowed, however, the Minority exercised its only option and filed over 170 amendments prior to the first business meeting scheduled to consider the Phase II reports. A number of these amendments addressed clear errors and contradictions in the draft reports that should have been addressed among staff during the production of the reports. As a consequence, those amendments that pointed out clear errors in drafting were addressed before the meeting on April 1, 2008. At that business meeting, the only one held to consider the substance of the Phase II reports, the Minority still had over 100 amendments outstanding. Additionally, five procedural motions were submitted for consideration in order to eliminate the need to work through all 100 amendments. Instead of allowing any consideration of the Vice Chairman's motions beyond the first or any of his remaining amendments, the Chairman cut off discussion and unilaterally called for a vote on final adoption of the reports. We cannot think of any time in our recollection of Committee proceedings or other Senate proceedings where there has been such a disregard for the rules, procedures, and traditions of the Senate.

Especially curious to us was the fact that the final vote was called for even though the reports were not yet finished. Rather, after the vote the majority made clear its intention to finish the reports on its own. This defies basic principles of fairness and sets a dangerous precedent. Never in the history of Phase I or Phase II were Members expected to vote on a report without the opportunity to be briefed on it several times and without having months to review and amend it, let alone be called to vote on a report that was not even finished.

Rules and procedures in the Senate and its Committees provide stability and legitimacy to the body's actions. Thomas Jefferson's *A Manual of Parliamentary Practice,* on the importance of rules in Congress, states:

> *It is much more material that there be a rule to go by, than what that rule is; that there may be a uniformity of proceeding in business not subject to the caprice of the Speaker or captiousness of the members. It is very material that order, decency, and regularity be preserved in a dignified public body.*

If decisions are approved according to orderly and fair proceedings, then the public is more likely to accept the results of those decisions. The rules of the Senate tend to advance the Minority's rights and prohibit arbitrary procedures.

It is ironic that the Majority would act outside the rules in order to adopt reports that accuse the Administration of distorting and mischaracterizing prewar intelligence on Iraq. As the Vice Chairman's minority views point out, these reports, crafted by the Majority, fail even to achieve their intended purpose. The Senate Intelligence Committee's unanimously approved July 2004 Phase I report makes clear that flawed intelligence—not Administration deception — was the basis for policymakers' statements and decisions. None of the facts in these last two reports changes or negates the Committee's unanimous conclusion four years ago.

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Despite the Committee's 2004 Report, these final two reports attempt to distort what the Intelligence Community assessed prior to the war in order to advance a presumed, politically advantageous argument. Yet those of us in Congress examined the same intelligence as the Bush Administration, and policymakers from the Legislature also characterized Iraq as a growing and dangerous threat to the United States. In fact, the public record is replete with examples of statements by Members of Congress making the same characterizations regarding Iraq's WMD and links to terrorism:

> *There is unmistakable evidence that Saddam Hussein is working aggressively to develop nuclear weapons and will likely have nuclear weapons within the next 5 years.* – **Chairman John Rockefeller, Senate Foreign Relations Committee hearing, September 25, 2002.**
>
> *In the four years since the inspectors, intelligence reports show that Saddam Hussein has worked to rebuild his chemical and biological weapons stock, his missile delivery capability, and his nuclear program . . . It is clear, however, that if left unchecked, Saddam Hussein will continue to increase his capability to wage biological and chemical warfare, and will keep trying to develop nuclear weapons.* – **Senator Hillary Clinton, Statement on the Senate Floor, October 10, 2002.**
>
> *When you look at what Saddam Hussein has at his disposal, in terms of chemical, biological, and perhaps even nuclear weapons, we cannot ignore the threat that he poses to the region and the fact that he has fomented terrorism throughout his reign.* – **Senator Dick Durbin, CNN's Larry King Live, "The Hunt for Bin Laden Intensifies; What is to be done with John Walker?," December 21, 2001.**
>
> *The President has rightly called Saddam Hussein's efforts to develop weapons of mass destruction a grave and gathering threat to Americans. The global community has tried but has failed to address that threat over the past decade. I have come to the inescapable conclusion that the threat posed to America by Saddam's weapons of mass destruction is so serious that despite the risks and we should not minimize the risks we must authorize the President to take the necessary steps to deal with that threat.... There has been some debate over how "imminent" a threat Iraq poses. I do believe Iraq poses an imminent threat. I also believe after September 11, that question is increasingly outdated. It is in the nature of these weapons that he has and the way they are targeted against civilian populations, that documented capability and demonstrated intent may be the only warning we get. To insist on further evidence could put some of our fellow Americans at risk. Can we afford to take that chance? I do not think we can.* – **Chairman John Rockefeller, Statement on the Senate Floor, October 10, 2002.**
>
> *Saddam's existing biological and chemical weapons capabilities pose real threats to America today, tomorrow . . . . He could make these weapons available to many terrorist groups, third parties, which have contact with his government. Those groups, in turn, could bring those weapons into the United States and unleash a devastating attack*

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*against our citizens. I fear that greatly.* **- Chairman John Rockefeller, Statement on the Senate Floor, October 10, 2002.**

Ultimately, these reports reveal a dubious agenda of vainly trying to prove the often quoted, but false, absolutely partisan, slogan, "Bush lied and people died." The Committee and the American people know full well that the intelligence on Iraq's WMD programs was wrong, and that senior policy leaders from both parties relied upon that incorrect intelligence to the nation's detriment. Rather than wasting time and resources on this futile quest, the Committee should have spent, and should be spending, the full force of its oversight ensuring that the Intelligence Community does not make such egregious errors in intelligence analysis ever again.

Any investigation that the Committee conducts should be done with the intention of improving the Intelligence Community and enhancing our national security. Regrettably, these reports neither improve our Intelligence Community nor enhance our national security. It is at the expense of long-standing Senate precedence and the credibility of this Committee that this futile and partisan exercise has been conducted. We believe it is vital for this Committee to return to bipartisan oversight and to depart from such wasteful practices. Unless we do so, intelligence oversight will turn into an oxymoron.

SAXBY CHAMBLISS
CHRISTOPHER S. BOND
ORRIN G. HATCH

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Orrin G. Hatch [redacted] Kit Bond

**ADDITIONAL VIEWS OF SENATOR HATCH JOINED BY VICE CHAIRMAN BOND AND SENATOR BURR**

(U) In July, 2004, the Senate Select Committee on Intelligence issued the *Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, subsequently colloquially referred to as "Phase One" of the Committee's investigation into intelligence failures related to the Iraq war. This report of over 500 pages, including 117 conclusions, was the most substantive investigation into a major intelligence failure since the original Church hearings and investigations that preceded the formation of the Committee in 1975. The substance of this report -- the careful parsing of the multiple intelligence failure -- is still being processed by the Intelligence Community and our oversight committees. This report was voted out of this Committee unanimously. *The New York Times* – not known for its sympathy to either the Republican administration or the Republican Senate leadership at the time – wrote: "The Senate report was remarkable both for the severity of its criticism and *the fact that it reflected a bipartisan consensus rarely seen in Congress.*" (Emphasis throughout is mine.)

(U) Several months before the release of that report, the Committee concluded an agreement for subsequent investigations. These investigations – known since then as "Phase Two" – devolved from the beginning into partisan disagreement. The process, efforts and results under Phase Two – including the two reports that complete the process with this publication – failed significantly in achieving unanimous consensus. On no other matter subject to congressional oversight is unanimous consensus more of an indicator of success or failure than it is on oversight of intelligence matters.

(U) The publication of these two reports – *Intelligence Activities Relating to Iraq by the Policy Counterterrorism Evaluation Group and the Office of Special Plans within the Office of the Under Secretary of Defense for Policy* and *Whether Public Statements Regarding Iraq by U.S. Government Officials Were Substantiated by Intelligence Information* (hereafter referred to as "The Rome Meetings" and "Statements," respectively) – came following repeated failures by the Majority to coordinate the work effort with the Minority. The decision to publish the reports was a peremptory decision by the Chairman of the Committee to terminate Minority participation in an amendment process that, while some might consider delaying by cavillation, had been well-established and productive in all previous stages of the investigation. As partisanship corrodes the value of intelligence, partisanship poisons intelligence oversight.

(U) The reports, as a direct result of this unnecessarily partisan process, are inconclusive, misleading, incomplete. (For detailed substantiation of this assertion, I associate myself with the Additional Views of the Vice Chairman.) It is both sad and ironic that the impressive and historic efforts that began with the publication of Phase One in 2004 ended with a divided vote on incomplete products on April Fool's Day, 2008.

***"The Rome Report"***

(U) An American official not part of the Intelligence Community meets with a controversial Iranian in a bar. A plan is drafted on a napkin. (!) For $5 million, it is proposed

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that traffic can be jammed in Tehran. For more investment, it is insinuated that regime change can be effected. Here is the punchline to this joke: *The Senate Select Committee on Intelligence investigates this as part of its review on Iraq intelligence failures.*

[redacted] The colorful scene – not an intelligence activity, according to this report, as well as common sense – occurred during the period of the "Rome meetings," which refers to several days in December of 2001 when two Department of Defense officials met with two Iranian former officials (one a member of the Islamic Revolutionary Guards Corps and another associated with the "intelligence establishment of Iran," although the Committee's report provides no further clarity on his association) to gather information on developments in Iran. The meeting was initiated by an American scholar from a conservative think tank, operating independently, and the Iranian expatriate and Iran-Contra figure Manucher Ghorbanifar. The meeting was facilitated by [redacted]

(U) The meetings received prior approval by the National Security Council. The DoD participants were there based on their long-standing and substantive knowledge of Iran and Farsi. The American scholar had over 20 years of experience on the subject.

(U) American citizens should be asked whether they would expect their government to respond to offers for substantive meetings on sensitive subjects – and Iran remains to this day a critical subject, and the desire for insights into Iran immediately following September 11 would not, in my opinion, be considered outlandish.

(U) The Committee report says:

> "The Committee's review of applicable laws and regulations indicates that Deputy National Security Advisor Hadley and Deputy Secretary Wolfowitz acted within their authorities in directing DoD personnel to attend the Rome meeting. The final version of the Counterintelligence Field Activity's report also identified no violations of law regarding the DoD contacts with Mr. Ghorbanifar as of the date their review was halted."

(U) At this point, the reader may pause to ask: "What does this have to do with Iraq?" The terms of reference determining the scope of "Phase Two," articulated in a press release by the Committee on February 12, 2004, give no insight. The investigation into the Rome meetings was about Iran, not Iraq, and never appeared to me to be related to completing the significant investigation this Committee had conducted on intelligence failures leading to the Iraq war. In a partisan Committee, as this one has sadly become, the Majority has within its purview the ability to conduct any investigation it deems worthwhile. That it did not conduct the review into the "Rome meeting" separately from the Iraq review and instead insisted on conducting this investigation into this Rome meeting about Iran as part of our investigation on Iraq leaves the proponents of this approach explaining a rationale I cannot, in good faith, articulate on their behalf.

(U) The conclusions reveal the nullibiety of the Committee's effort. The first and third conclusions appear to give bureaucratic direction on how to hold meetings. NSC Deputy Hadley

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is, according to the report, mildly chastised for failing to inform DCI Tenet and Deputy Secretary Armitage of the "full nature of the planned contact," although anyone reading the report would discern that the "full nature" was not able to be known until after the meetings were actually held. The third conclusion criticizes participants for withholding certain information about these meetings. Keeping in mind that the Committee report itself makes clear the Committee's lack of understanding of what intelligence collection actually is, and reminding one that the report cites no laws or authorities broken or compromised, the lack of complete clarity between government agencies regarding certain meetings does not by any stretch of the imagination reach to a level of "stove-piping" or other act of legitimate intelligence oversight concern.

(U) What is particularly disturbing about the conclusions to this report is the bandying of the term "inappropriate." The role of the U.S. citizen playing interlocutor to these meetings is "inappropriate." The handling of information was "inappropriate." What does "inappropriate" mean in this context? What is the norm for "appropriate"? As government officials, we deal within the lines of authority, regulation, law. Actions can be deemed to be within or outside of those lines, when they are the latter they are unauthorized, in violation of regulations, illegal. No action reviewed in this report is so deemed. Too often these days, it seems that when one seeks to criticize without substance or standing, one is reduced to uttering that something is "inappropriate." In Washington today, this has come to be the cheap calumniation by the callow-headed.

(U) Every exercise of this Committee should seek opportunities to expand the understanding of intelligence – for Members of Congress, at the very least and, when the investigations result in public reports, for the public, which needs to be educated on the important role of intelligence in our democracy. Near the conclusion of this report we find, "There can be varying opinions on the extent to which the Rome and Paris meetings represented intelligence information collection." Couldn't this report have reviewed and articulated the various definitions of "intelligence collection," as understood in law and tradecraft? Is a meeting between an American official who is not a member of the Intelligence Community and a foreigner "intelligence collection"? (Hint: It is not.) On another point, the CIA has, through good and bad experience, developed a formal method for labeling foreign individuals "fabricators" and "information peddlers." What is the formal procedure for doing so? What are the implications, and are there regulations, for policymakers for subsequently dealing with individuals so labeled by the Intelligence Community? In the murky world of betrayed loyalties and stolen secrets, are "fabricators" and "information peddlers" ever again worthwhile sources? Finally, what are the guidelines for CIA officers, particularly serving in Stations overseas, for obtaining information on activities of American citizens, particularly U.S. government officials? Is it ever the norm for officers to seek information on U.S. policymakers from liaison services? All of these questions, in my opinion, begged to be addressed by the material covered in this report.

(U) Instead, the Committee reviewed hundreds of pages of testimony and documents on the bureaucratic results of these meetings. Ultimately, the Rome meetings went nowhere. There was no policy action – certainly no covert action – initiated or even contemplated by government officials. It was a classic Washington episode: Meetings were held, no action was taken – but an

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investigation was conducted. This was an investigation which, like the meetings of officials not in the Intelligence Community not dealing with Iraq, went nowhere.

***"Statements"***

(U) There continues to be debate over whether the Committee should investigate the use of intelligence by policymakers advocating war in Iraq. It is questionable that, in this particular exercise, the Committee excluded for consideration Congress, which exercised its constitutional policy making authority when it voted on the joint resolution to authorize the use of force against Iraq in October of 2002. It is profoundly disappointing that, in its illogical haste to terminate "Phase Two," the Committee's majority made no effort to allow those in the executive it cites in this final report to explain how they weighed intelligence in the context of policy deliberation. By failing to do so, the Committee once again failed to illuminate the role the use of intelligence plays in the policy making process.

(U) Seventy-seven Members of the United States Senate voted in favor of H.J. Res. 114, the joint resolution authorizing the use of United States Armed Forces against Iraq. I don't know how many read the October 2002 National Intelligence Estimate. Those of us on the Committee were privy to hearings as well as intelligence products. Five Members of the Committee at that time (all Democrats) voted against the resolution, 12 Members voted in favor. Of the 12 Members of the current Committee present then, 9 voted in favor, 3 against (all Democrats). Of the whole Senate, one Republican voted against; 30 Democratic senators, including a current presidential contender, voted in favor of the resolution authorizing the use force against Iraq.

(U) Many Members of Congress have had reason to revisit their votes, and the reasons have been varied. What is interesting to note is how very few have hung their votes completely on how they understood the intelligence at the time. Many Members did not avail themselves of the intelligence (others claim to have relied on their staffs' rendering of the National Intelligence Estimate). How many policymakers relied completely on intelligence to make their policy determination? I would argue none, because if a policymaker did rely solely on intelligence, they would be forfeiting the wider considerations prerequisite to being a policymaker. This applies, I have no doubt, to policymakers in the Administration. And this is why it is a failure of analysis, let alone of fairness, that the Committee investigation on this particular report did not even attempt to solicit from Administration officials cited in the report their views on how they weighed intelligence in the context of their deliberations.

(U) The report's conclusions articulate what is already well-known for those of us who have labored through document review of "Phase One" and have heard – originally and repeatedly – the statements of Administration officials. On matters of capability, the report concludes that statements by Administration officials *were substantiated* by the intelligence on questions of nuclear, biological, chemical weapons and weapons of mass destruction in general. (The report notes that some statements on nuclear capability did not reflect disagreement within the IC, some on weapons of mass destruction did not reflect IC caveats known at the time, and that the Secretary of Defense's statement on underground WMD facilities' vulnerability to airstrikes was not supported by intelligence.) On statements by Administration officials on

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Iraq's link to terror groups other than Al-Qa'ida, the statements *were substantiated by the intelligence, as were statements on Zarqawi's presence in Iraq, and statements that Iraq and Al-Qa'ida had had contacts.* (The report notes, however, that "Statements and implications by the President and Secretary of State *suggesting* that Iraq and Al-Qa'ida had a partnership, or that Iraq had provided Al-Qa'ida with weapons training, were not substantiated by the intelligence." I emphasize the verb "suggesting," noting officials never "asserted" such a partnership.) Statements on Saddam's intentions – i.e., speculation on his future actions – had no intelligence support, and policy makers appear to me to be clear in their public statements that such speculation – while certainly legitimate, given the pollyannish lack of imagination we had on the Al-Qa'ida threat prior to 9/11 – was never an established "known," but that policymakers would never again commit the absence of imagination that had allowed Al-Qa'ida to strike us unprepared.

(U) That "Phase One" concluded that this consensus between statements and intelligence was not the result of pressure from officials is relevant[209]. That the overall gist of this report is that Administration officials' statements were supported by intelligence assessments comes as no relief, considering how utterly bad the underlying intelligence was.

(U) There is, in my opinion, no excusing the spectacularly bad intelligence prepared by the IC in the run-up to the war in Iraq, particularly on the question of weapons of mass destruction. However, the IC needs to be defended in one critical aspect: bad intelligence cannot be used wholly as the excuse for the decision to go to war. To do so would be to not only blur, but to eliminate, the line between policy-making and intelligence. To eliminate that line is to do no less than corrode a fundamental pillar of a democratic society.

(U) *Intelligence informs policy. It does not dictate policy.* The policymaker who ignores the contribution of intelligence denies a potentially valuable source of analysis on difficult subjects about which the policy maker requires the widest breadth of insight. The intelligence analyst who writes analysis without subjecting it to competitive hypothesis testing fails the policymaker. The policy maker who relies solely on intelligence should be dismissed, for they do not grasp the most fundamental truth of intelligence – that it is an attempt to penetrate denied knowledge and will almost always be incomplete. The intelligence professional who seeks to make policy should also be dismissed, for the nature of intelligence – the need to keep and steal secrets, to entice foreigners to betray their governments, and act covertly on behalf of our government – must be kept distinct from the policy process in order for a democratic society to function. By keeping that distinction clear, the different roles of policymakers and intelligence professionals are maintained. Intelligence professionals are responsible for their failures in intelligence collection, analysis, counter-intelligence and covert action. Policymakers must also bear the burden of their mistakes, an entirely different order of mistakes. It is a pity this report fails to illuminate this distinction.

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209 . Conclusion 83: "The Committee 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." Conclusion 102: "The Committee found that none of the analysts or other people interviewed by the Committee said that they were pressured to change their conclusions related to Iraq's links to terrorism."

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