

## **EXHIBIT C**

### **House Government Reform Minority Staff Report Iraq on the Record**



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# **IRAQ ON THE RECORD**

## **THE BUSH ADMINISTRATION'S PUBLIC STATEMENTS ON IRAQ**

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## EXECUTIVE SUMMARY

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On March 19, 2003, U.S. forces began military operations in Iraq. Addressing the nation about the purpose of the war on the day the bombing began, President Bush stated: "The people of the United States and our friends and allies will not live at the mercy of an outlaw regime that threatens the peace with weapons of mass murder."

One year later, many doubts have been raised regarding the Administration's assertions about the threat posed by Iraq. Prior to the war in Iraq, the President and his advisors repeatedly claimed that Iraq possessed weapons of mass destruction that jeopardized the security of the United States. The failure to discover these weapons after the war has led to questions about whether the President and his advisors were candid in describing Iraq's threat.

This report, which was prepared at the request of Rep. Henry A. Waxman, is a comprehensive examination of the statements made by the five Administration officials most responsible for providing public information and shaping public opinion on Iraq: President George Bush, Vice President Richard Cheney, Defense Secretary Donald Rumsfeld, Secretary of State Colin Powell, and National Security Advisor Condoleezza Rice. It finds that the five officials made misleading statements about the threat posed by Iraq in 125 public appearances. The report and an accompanying database identify 237 specific misleading statements by the five officials.

### Methodology

The Special Investigations Division compiled a database of statements about Iraq made by President Bush, Vice President Cheney, Secretary Rumsfeld, Secretary Powell, and National Security Advisor Rice. All of the statements in the database were drawn from speeches, press conferences and briefings, interviews, written statements, and testimony by the five officials.

This *Iraq on the Record* database contains statements made by the five officials that were misleading at the time they were made. The database does not include statements that appear in hindsight to be erroneous but were accurate reflections of the views of intelligence officials at the time they were made. The entire database is accessible to members of Congress and the public at [www.reform.house.gov/min](http://www.reform.house.gov/min).

This report is a summary of the *Iraq on the Record* database. Because the officials' statements have been compiled into a searchable database, the report can make new observations about the topics that were the subject of misleading claims, the timing of these claims, and the officials who were responsible. To ensure objectivity, the report was peer reviewed for fairness and accuracy by two

leading experts: Joseph Cirincione, senior associate and director of the Non-Proliferation Project at the Carnegie Endowment for International Peace, and Greg Thielmann, former acting director of the Office of Strategic, Proliferation, and Military Affairs in the Department of State's Bureau of Intelligence and Research.

## **Findings**

**Number of Misleading Statements.** The *Iraq on the Record* database contains 237 misleading statements about the threat posed by Iraq that were made by President Bush, Vice President Cheney, Secretary Rumsfeld, Secretary Powell, and National Security Advisor Rice. These statements were made in 125 separate appearances, consisting of 40 speeches, 26 press conferences and briefings, 53 interviews, 4 written statements, and 2 congressional testimonies. Most of the statements in the database were misleading because they expressed certainty where none existed or failed to acknowledge the doubts of intelligence officials. Ten of the statements were simply false.

**Timing of the Statements.** The statements began at least a year before the commencement of hostilities in Iraq, when Vice President Cheney stated on March 17, 2002: "We know they have biological and chemical weapons." The Administration's misleading statements continued through January 22, 2004, when Vice President Cheney insisted: "there's overwhelming evidence that there was a connection between al-Qaeda and the Iraqi government." Most of the misleading statements about Iraq — 161 statements — were made prior to the start of the war. But 76 misleading statements were made by the five Administration officials after the start of the war to justify the decision to go to war.

The 30-day period with the greatest number of misleading statements was the period before the congressional vote on the Iraq war resolution. Congress voted on the measure on October 10 and October 11, 2002. From September 8 through October 8, 2002, the five officials made 64 misleading statements in 16 public appearances. A large number of misleading statements were also made during the two months before the war began. Between January 19 and March 19, 2003, the five officials made 48 misleading statements in 26 public appearances.

**Topics of the Statements.** The 237 misleading statements can be divided into four categories. The five officials made 11 statements that claimed that Iraq posed an urgent threat; 81 statements that exaggerated Iraq's nuclear activities; 84 statements that overstated Iraq's chemical and biological weapons capabilities; and 61 statements that misrepresented Iraq's ties to al Qaeda.

**Statements by President Bush.** Between September 12, 2002, and July 17, 2003, President Bush made 55 misleading statements about the threat posed by Iraq in 27 separate public appearances. On October 7, 2002, three days before the

congressional votes on the Iraqi war resolution, President Bush gave a speech in Cincinnati, Ohio, with 11 misleading statements, the most by any of the five officials in a single appearance.

Some of the misleading statements by President Bush include his statement in the January 28, 2003, State of the Union address that “the British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa”; his statement on October 2, 2002, that “the Iraqi regime is a threat of unique urgency”; and his statement on May 1, 2003, that “the liberation of Iraq . . . removed an ally of al Qaeda.”

**Statements by Vice President Cheney.** Between March 17, 2002, and January 22, 2004, Vice President Cheney made 51 misleading statements about the threat posed by Iraq in 25 separate public appearances.

Some of the misleading statements by Vice President Cheney include his statement on September 8, 2002, that “we do know, with absolute certainty, that he is using his procurement system to acquire the equipment he needs . . . to build a nuclear weapon”; his statement on March 16, 2003, that “we believe he has, in fact, reconstituted nuclear weapons”; and his statement on October 10, 2003, that Saddam Hussein “had an established relationship with al Qaeda.”

**Statements by Secretary Rumsfeld.** Between May 22, 2002, and November 2, 2003, Secretary Rumsfeld made 52 misleading statements about the threat posed by Iraq in 23 separate public appearances.

Some of the misleading statements by Secretary Rumsfeld include his statement on November 14, 2002, that within “a week, or a month” Saddam Hussein could give his weapons of mass destruction to al Qaeda, which could use them to attack the United States and kill “30,000, or 100,000 . . . human beings”; his statement on January 29, 2003, that Saddam Hussein’s regime “recently was discovered seeking significant quantities of uranium from Africa”; and his statement on July 13, 2003, that there “was never any debate” about whether Iraq had a nuclear program.

**Statements by Secretary Powell.** Between April 3, 2002, and October 3, 2003, Secretary Powell made 50 misleading statements about the threat posed by Iraq in 34 separate public appearances.

Secretary Powell sometimes used caveats and qualifying language in his public statements. His statements that contained such cautions or limitations were not included in the database. Nonetheless, many of Secretary Powell’s statements did not include these qualifiers and were misleading in their expression of certainty, such as his statement on May 22, 2003, that “there is no doubt in our minds now that those vans were designed for only one purpose, and that was to make biological weapons.”

**Statements by National Security Advisor Rice.** Between September 8, 2002, and September 28, 2003, National Security Advisor Rice made 29 misleading statements about the threat posed by Iraq in 16 separate public appearances.

Although Ms. Rice had the fewest public appearances and the fewest misleading statements, she had the highest number of statements — 8 — that were false. These false statements included several categorical assertions that that no one in the White House knew of the intelligence community's doubts about the President's assertion that Iraq sought to import uranium from Africa.

## I. INTRODUCTION

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The President and his senior advisors have a special obligation to describe accurately the national security threats facing the nation. This special obligation derives in part from the nature of the subject. There is no decision that is more grave than sending our armed forces to battle. The special obligation also derives in part from the unique access that the President and his advisors have to classified information. *On matters of national security, only the President and his advisors have full access to the relevant classified information. Members of Congress and the public see only a partial picture based on the information the President and his advisors decide to release.*

Recently, serious questions have been raised regarding whether President Bush and his Administration met this special obligation. Numerous news reports and columns have questioned the accuracy of specific statements by President Bush and other Administration officials. The White House maintains that any misstatements were “only a small part of an ‘overwhelming’ case that Iraqi President Saddam Hussein posed a threat to the United States.”<sup>1</sup> Other observers, though, have detected a pattern of consistent misrepresentation.

The one-year anniversary of the beginning of military operations in Iraq marks an occasion for comprehensively assessing whether the President and his senior advisors met their obligation to accurately present intelligence to the American public. For this reason, Rep. Waxman asked the Special Investigations Division to assemble in a single database any misleading statements made by President Bush, Vice President Cheney, and other senior Administration officials about the threat posed by Iraq. This report summarizes key findings from this *Iraq on the Record* database. The database itself is available to members of Congress and the public at [www.reform.house.gov/min](http://www.reform.house.gov/min).

## II. METHODOLOGY

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The *Iraq on the Record* database contains statements from the five Administration officials most responsible for providing public information and shaping public opinion on the Iraq war: President George Bush; Vice President Richard Cheney; Secretary of Defense Donald Rumsfeld; Secretary of State Colin Powell; and National Security Advisor Condoleezza Rice.

The statements in the database are drawn from 125 public statements or appearances in which the five officials discussed the threat posed by Iraq. The

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<sup>1</sup> *White House Admits CIA Warned It before Speech*, Los Angeles Times (July 23, 2003) (quoting Deputy National Security Advisor Stephen Hadley).



sources of the statements are 40 speeches, 26 press conferences and briefings, 53 interviews, 4 written statements and articles, and 2 appearances before congressional committees. Quotes from the officials in newspaper articles or other similar secondary sources were not included in the database because of the difficulty of discerning the context of such quotes and ensuring their accuracy. Statements made by the officials before March 2002, one year before the commencement of hostilities in Iraq, were also not included.

The database contains statements that were misleading based on what was known to the Administration at the time the statements were made. In compiling the database, the Special Investigations Division did not assess whether "subjectively" the officials believed a specific statement to be misleading. Instead, the investigators used an "objective" standard. For purposes of the database, a statement is considered "misleading" if it conflicted with what intelligence officials knew at the time or involved the selective use of intelligence or the failure to include essential qualifiers or caveats.

The database does not include statements that appear mistaken only in hindsight. If a statement was an accurate reflection of U.S. intelligence at the time it was made, the statement is excluded from the database even if it now appears erroneous.

To determine whether a statement was misleading, the Special Investigations Division examined the statement in light of intelligence known to the Administration at the time of the statement. The primary sources for determining the intelligence available to the Administration were (1) the portions of the October 2002 National Intelligence Estimate that have been released to the public, (2) the February 5, 2004, statement by Director of Central Intelligence George Tenet entitled *Iraq and Weapons of Mass Destruction*, (3) the recent report of the nonpartisan Carnegie Endowment for International Peace entitled *WMD in Iraq: Evidence and Implications*, and (4) news and other reports quoting U.S. officials regarding the intelligence available to the Administration on Iraq.

In general, hypothetical and implied statements about threats posed by Iraq were not included in the database of misleading statements. A few such statements were included, however, where they implied a threat in evocative and frightening language. These statements were misleading because the effect was to instill in the public the perception that the threat actually existed.

To be conservative, the Special Investigations Division excluded hundreds of statements by the five officials that many observers would consider misleading. For example, the five officials made numerous claims that Iraq "had" stockpiles of chemical weapons. Many of these statements were misleading in that they implied that Iraq possessed these stockpiles currently and did not acknowledge the doubts of intelligence experts. Nevertheless, these statements were not included in the database when they were expressed in the past tense because Iraq

did possess chemical weapons at least as late as the early 1990s and used them during the 1980s.<sup>2</sup>

Investigators also excluded scores of statements of certainty that Iraq possessed “weapons of mass destruction” prior to the war. To many observers, these statements would be misleading because they implied that Iraq possessed nuclear weapons without acknowledging the divisions among intelligence officials about whether this was the case. The Special Investigations Division excluded these general “weapons of mass destruction” assertions, however, because of the ambiguity inherent in the phrase.

The Special Investigations Division asked two leading independent experts to peer review this report for fairness and accuracy. These two independent experts are: Joseph Cirincione, senior associate and director of the Non-Proliferation Project at the Carnegie Endowment for International Peace, and Greg Thielmann, former acting director of the Office of Strategic, Proliferation, and Military Affairs in the Department of State's Bureau of Intelligence and Research. These experts judged that this report is a fair and accurate depiction of the Administration's statements.

### III. NUMBER AND TIMING OF MISLEADING STATEMENTS

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President Bush, Vice President Cheney, Secretary Rumsfeld, Secretary Powell, and National Security Advisor Rice repeatedly made misleading statements about the threat posed by Iraq. They made these statements in 125 separate public appearances. The total number of misleading statements made by the five officials is 237.

The 237 misleading statements were made in a variety of forums. On 53 occasions, the five officials gave interviews in which they made claims that were misleading. They also made misleading statements in 40 speeches, 26 press conferences and briefings, 4 written statements and articles, and 2 appearances before Congress.

The misleading statements began at least one year before the start of the war in Iraq, when Vice President Cheney stated on March 17, 2002:

The President's made it clear that we are concerned about nations such as Iraq developing weapons of mass destruction. We know the Iraqis have been engaged in such efforts over the years. We know they have

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<sup>2</sup> United Nations Monitoring, Verification, and Inspection Commission, *Unresolved Disarmament Issues: Iraq's Proscribed Weapons Programmes*, UNMOVIC Working Document (Mar. 6, 2003).

biological and chemical weapons. . . . And we also have reason to believe they're pursuing the acquisition of nuclear weapons.<sup>3</sup>

These misleading statements have continued through at least January 2004. On January 22, 2004, Vice President Cheney said in a National Public Radio interview, "I think there's overwhelming evidence that there was a connection between al-Qaeda and the Iraqi government. . . . I'm very confident that there was an established relationship there."<sup>4</sup> He also said in the same interview, "we know . . . that prior to our going in that he had spent time and effort acquiring mobile biological weapons labs, and we're quite confident he did, in fact, have such a program. We've found a couple of semi trailers at this point which we believe were, in fact, part of that program." As described below, both of these assertions were misleading in that they failed to disclose the serious doubts held by intelligence officials.

The majority of the misleading statements — 161 — were made in the buildup to the war in Iraq. The volume of misleading statements by the five officials peaked before key decision points in the buildup to the war. Congress began debate on the Iraq war resolution in early October 2002 and voted on the measure on October 10 and October 11, 2002. During the 30 days between September 8 and October 8, 2002, the five officials made 64 misleading statements in 16 public appearances. This was the highest number of misleading statements for any 30-day period.

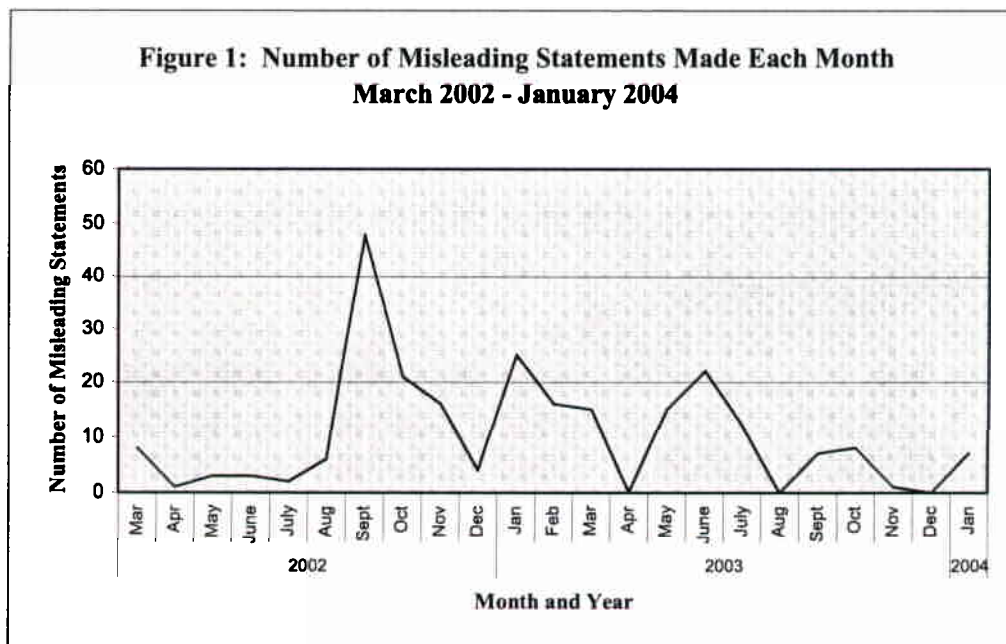
There were also a large number of misleading statements in the two months before hostilities began on March 19, 2003, when the five officials made 48 misleading statements in 26 public appearances.

Figure 1 shows the ebb and flow of misleading statements over time.

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<sup>3</sup> White House, *Press Conference by Vice President Dick Cheney and his Highness Salmam bin Hamad Al Khalifa, Crown Prince of Bahrain, at Shaikh Hamat Palace* (Mar. 17, 2002).

<sup>4</sup> *Morning Edition*, National Public Radio (Jan. 22, 2004).



Most of the misleading statements in the *Iraq on the Record* database involve the selective use of intelligence or the failure to include essential qualifiers or caveats. For example, statements of certainty that Iraq was close to possessing nuclear weapons were misleading because they ignored significant doubts and disagreement in the U.S. intelligence community regarding whether Iraq was actively pursuing a nuclear program.

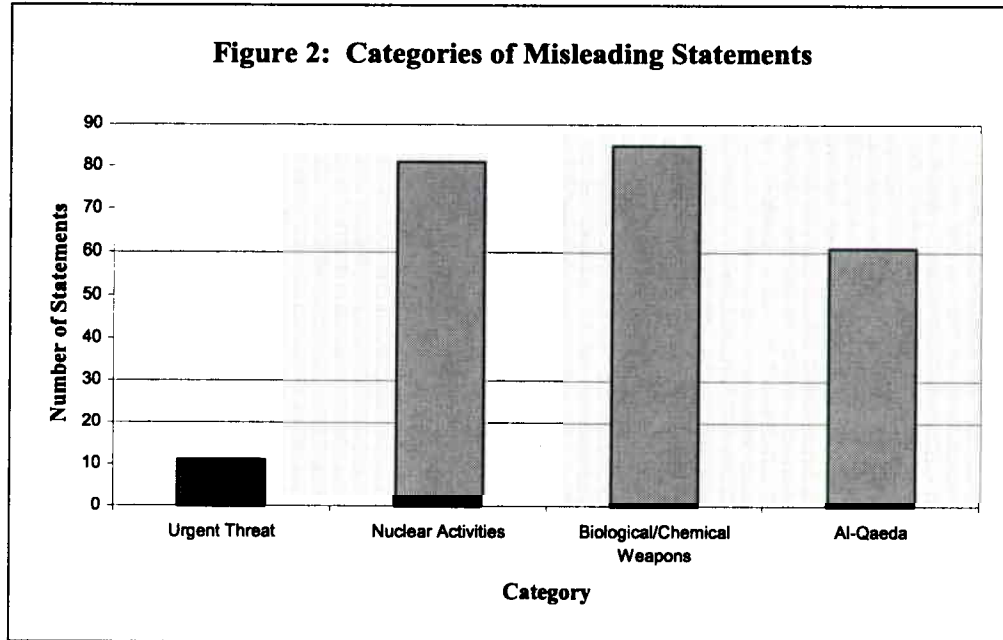
In 10 instances, however, the statements included in the database were false statements that directly contradicted facts known at the time by the Administration. For example, on July 11, 2003, Ms. Rice stated with respect to the claim that Iraq was seeking uranium in Africa: “Now, if there were doubts about the underlying intelligence . . . those doubts were not communicated to the President, to the Vice President, or to me.”<sup>5</sup> This statement is false because, as Ms. Rice’s deputy Stephen Hadley subsequently acknowledged, the CIA sent Ms. Rice and Mr. Hadley memos in October 2002 warning against the use of this claim.<sup>6</sup>

<sup>5</sup> White House, *Press Gaggle with Ari Fleischer and Dr. Condoleezza Rice* (July 11, 2003).

<sup>6</sup> White House, *Dan Bartlett and Steve Hadley Hold Press Briefing on Iraq Weapons of Mass Destruction and the State of the Union Speech* (July 22, 2003).

**IV. CATEGORIES OF MISLEADING STATEMENTS**

The misleading statements by President Bush, Vice President Cheney, Secretary Rumsfeld, Secretary Powell, and National Security Advisor Rice fall into four general categories: (1) statements suggesting that Iraq posed an urgent threat, (2) statements regarding Iraq's nuclear activities, (3) statements regarding Iraq's biological and chemical weapons capabilities, and (4) statements regarding Iraq's support of al Qaeda. Figure 2 shows the number of misleading statements in each category.



**A. Statements that Iraq Posed an Urgent Threat**

On February 5, 2004, Director of Central Intelligence George Tenet categorically stated that the U.S. intelligence community “never said there was an ‘imminent’ threat.”<sup>7</sup> Yet this was not the impression conveyed by President Bush, Vice President Cheney, Secretary Rumsfeld, Secretary Powell, and National Security Advisor Rice in their public statements on Iraq. In 10 different appearances, these five officials made 11 statements claiming that Iraq posed an urgent threat.

For example:

<sup>7</sup> Central Intelligence Agency, *Remarks as Prepared for Delivery by Director of Central Intelligence George J. Tenet at Georgetown University* (Feb. 5, 2004).

- President Bush stated on October 2, 2002: “the Iraqi regime is a threat of unique urgency. . . . [I]t has developed weapons of mass death.”<sup>8</sup>
- President Bush stated on November 20, 2002: “Today the world is . . . uniting to answer the unique and urgent threat posed by Iraq.”<sup>9</sup>
- Vice President Cheney stated on August 26, 2002: “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.”<sup>10</sup>

In one instance, Secretary Rumsfeld said that Iraq could give weapons of mass destruction to al Qaeda in “a week, or a month,” resulting in the deaths of up to 100,000 people. On November 14, 2002, Secretary Rumsfeld stated:

Now, transport yourself forward a year, two years, or a week, or a month, and if Saddam Hussein were to take his weapons of mass destruction and transfer them, either use them himself, or transfer them to the Al-Qaeda, and somehow the Al-Qaeda were to engage in an attack on the United States, or an attack on U.S. forces overseas, with a weapon of mass destruction you're not talking about 300, or 3,000 people potentially being killed, but 30,000, or 100,000 . . . human beings.”<sup>11</sup>

## **B. Statements about Iraq's Nuclear Capabilities**

In their potential for destruction and their ability to evoke horror, nuclear weapons are in a class by themselves. As Dr. David Kay, former special advisor to the Iraq Survey Group, testified on January 28, 2004: “all of us have and would continue to put the nuclear weapons in a different category. It's a single weapon that can do tremendous damage, as opposed to multiple weapons that can do the same order of damage. . . . I think we should politically treat nuclear as a difference.”<sup>12</sup>

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<sup>8</sup> White House, *President, House Leadership Agree on Iraq Resolution* (Oct. 2, 2002).

<sup>9</sup> *President Bush Speaks to Atlantic Youth Council*, CNN (Nov. 20, 2002).

<sup>10</sup> White House, *Vice President Speaks at VFW 103rd National Convention* (Aug. 26, 2002).

<sup>11</sup> U.S. Department of Defense, *Secretary Rumsfeld Live Interview with Infinity CBS Radio* (Nov. 14, 2002).

<sup>12</sup> Testimony of David Kay, former special advisor to the Iraq Survey Group, before the Senate Armed Services Committee, *Hearing on Iraqi Weapons of Mass Destruction and Related Programs* (Jan. 28, 2004).

For precisely this reason, the Administration's statements about Iraq's nuclear capabilities had a large impact on congressional and public perceptions about the threat posed by Iraq. Many members of Congress were more influenced by the Administration's nuclear assertions than by any other piece of evidence. Rep. Waxman, for example, wrote to President Bush in June 2003 that in voting for the Iraq war resolution: "Like other members, I was particularly influenced by your views about Iraq's nuclear intentions. Although chemical and biological weapons can inflict casualties, no threat is greater than the threat of nuclear weapons."<sup>13</sup> Numerous members of Congress stressed Iraq's nuclear threat in their floor statements explaining their support of the resolution.<sup>14</sup>

Despite the significance of the nuclear issue, President Bush, Vice President Cheney, Secretary Powell, Secretary Rumsfeld, and National Security Advisor Rice repeatedly misrepresented the nuclear threat posed by Iraq. The five officials made 49 separate public appearances in which they made misleading statements about Iraq's nuclear threat. In these appearances, they made a total of 81 misleading statements regarding Iraq's nuclear activities.

These misleading statements generally fall into one of three categories: (1) misleading statements about the status of Iraq's nuclear program, (2) misleading statements about the purpose of aluminum tubes sought by Iraq, and (3) misleading statements about Iraq's attempts to obtain uranium from Africa.

### **1. Claims about the Status of Iraq's Nuclear Program**

Prior to the war, there were significant divisions within the intelligence community about whether Iraq had resumed efforts to make nuclear weapons. In his speech on February 5, 2004, Mr. Tenet explained that there was not unanimity on whether Iraq had reconstituted its nuclear program and that these differences were described in the National Intelligence Estimate (NIE): "let me be clear, where there were differences, the Estimate laid out the disputes clearly."<sup>15</sup> In particular, the State Department's Bureau of Intelligence and Research (INR) concluded in the NIE that "[t]he 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." INR added: "Lacking persuasive evidence that Baghdad has launched a coherent effort to reconstitute its nuclear weapons program, INR is unwilling to speculate

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<sup>13</sup> Letter from Rep. Henry A. Waxman to President George W. Bush (June 2, 2003).

<sup>14</sup> See, e.g., Statement of Senator Mary Landrieu, Congressional Record, S10330 (Oct. 10, 2002); Statement of Rep. C.L. "Butch" Otter, Congressional Record, H7787 (Oct. 10, 2002); Statement of Rep. Dennis Moore, Congressional Record, H7796 (Oct. 10, 2002).

<sup>15</sup> Central Intelligence Agency, *supra* note 7.

that such an effort began soon after the departure of UN inspectors.”<sup>16</sup> The INR position was similar to the conclusions of the International Atomic Energy Agency (IAEA), which concluded that there was “no indication of resumed nuclear activities . . . nor any indication of nuclear-related prohibited activities.”<sup>17</sup>

These doubts and qualifications, however, were not communicated to the public. Instead, the five Administration officials repeatedly made unequivocal comments about Iraq's nuclear program. For example, President Bush said in October 2002 that “[t]he regime has the scientists and facilities to build nuclear weapons and is seeking the materials required to do so.”<sup>18</sup> Several days later, President Bush asserted that Saddam Hussein “is moving ever closer to developing a nuclear weapon.”<sup>19</sup>

Vice President Cheney made perhaps the single most egregious statement about Iraq's nuclear capabilities, claiming: “we know he has been absolutely devoted to trying to acquire nuclear weapons. And we believe he has, in fact, reconstituted nuclear weapons.”<sup>20</sup> He made this statement just three days before the war. He did not admit until September 14, 2003, that his statement was wrong and that he “did misspeak.”<sup>21</sup>

President Bush and others portrayed the threat of Saddam Hussein waging nuclear war against the United States or its allies as one of the most urgent reasons for preemptively attacking Iraq. Administration officials used evocative language and images. On the eve of congressional votes on the Iraq war resolution, for example, President Bush stated: “Knowing these realities, America must not ignore the threat gathering against us. 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.”<sup>22</sup>

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<sup>16</sup> National Intelligence Council, *Iraq's Continuing Program for Weapons of Mass Destruction: Key Judgements (from October 2002 NIE)* (declassified July 18, 2003).

<sup>17</sup> *In a Chief Inspector's Words: 'A Substantial Measure of Disarmament,'* New York Times (Mar. 8, 2003).

<sup>18</sup> White House, *President, House Leadership Agree on Iraq Resolution*, *supra* note 8.

<sup>19</sup> White House, *President Bush Outlines Iraqi Threat; Remarks by the President on Iraq* (Oct. 7, 2002).

<sup>20</sup> *Meet the Press*, NBC (Mar. 16, 2003).

<sup>21</sup> *Meet the Press*, NBC (Sept. 14, 2003). On May 20, 2003, the *Washington Post* reported that Vice President Cheney's aides said, “Cheney was referring to Saddam Hussein's nuclear programs, not weapons.” *White House Notebook: Energy Policy Spurs Affirmative Action Debate*, Washington Post (May 20, 2003).

<sup>22</sup> White House, *President Bush Outlines Iraqi Threat*, *supra* note 19.



Following the commencement of military operations in Iraq, Administration officials continued to make misleading statements regarding Iraq's nuclear program. For example, Secretary Rumsfeld denied on July 13, 2003, that there was "any debate" about Iraq's nuclear capabilities within the Administration, stating: "We said they had a nuclear program. That was never any debate."<sup>23</sup>

Since the war ended, the Iraq Survey Group has been unable to find evidence of the nuclear program described by the five officials. On October 2, 2003, David Kay reported that "we have not uncovered evidence that Iraq undertook significant post-1998 steps to actually build nuclear weapons or produce fissile material."<sup>24</sup> In his January 28, 2004, testimony, Dr. Kay reported that "[i]t was not a reconstituted, full-blown nuclear program."<sup>25</sup> He added, "As best as has been determined . . . in 2000 they had decided that their nuclear establishment had deteriorated to such point that it was totally useless."<sup>26</sup> His conclusion was that there was "no doubt at all" that Iraq had less of an ability to produce fissile material in 2001 than in 1991.<sup>27</sup> According to Dr. Kay, the nuclear program had been "seriously degraded" and the "activities of the inspectors in the early '90s did a tremendous amount."<sup>28</sup>

## 2. Claims about the Aluminum Tubes

In 2001 and 2002, shipments of aluminum tubes to Iraq were intercepted.<sup>29</sup> This discovery led to an active debate within intelligence agencies about the intended use of the tubes.

Numerous experts believed the tubes were for conventional rockets rather than a nuclear development program. In his February 5, 2004, speech, Mr. Tenet explained that disagreement over the purpose of the aluminum tubes was "a

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<sup>23</sup> *This Week With George Stephanopoulos*, ABC (July 13, 2003).

<sup>24</sup> Statement by David Kay on the Interim Progress Report on the Activities of the Iraq Survey Group (ISG) before the House Permanent Select Committee on Intelligence, the House Committee on Appropriations, Subcommittee on Defense, and the Senate Select Committee on Intelligence (Oct. 2, 2003).

<sup>25</sup> Testimony of David Kay, *supra* note 12.

<sup>26</sup> *Id.*

<sup>27</sup> *This Week With George Stephanopoulos*, ABC (Oct. 5, 2003).

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

<sup>29</sup> *Speculation, Fact Hard to Separate in Story of Iraq's 'Nuclear' Tubes*, USA Today (Aug. 1, 2003).

debate laid out extensively in the estimate and one that experts still argue over.”<sup>30</sup> The agency with the most technical expertise in this area, the Department of Energy, believed that the tubes likely were not part of a nuclear enrichment program, stating in the NIE that “the tubes probably are not part of the program.”<sup>31</sup> The International Atomic Energy Agency agreed, concluding: “There is no indication that Iraq has attempted to import aluminum tubes for use in centrifuge enrichment.”<sup>32</sup>

In addition to dissent from the Energy Department and international inspectors, the State Department also expressed formal reservations, stating in the NIE that “INR is not persuaded that the tubes in question are intended for use as centrifuge rotors.”<sup>33</sup> Instead, the State Department accepted the “judgment of technical experts at the U.S. Department of Energy (DOE) who have concluded that the tubes Iraq seeks to acquire are poorly suited for use in gas centrifuges.” The State Department explained its position in detail:

The very large quantities being sought, the way the tubes were tested by the Iraqis, and the atypical lack of attention to operational security in the procurement efforts are among the factors, in addition to the DOE assessment, that lead INR to conclude that the tubes are not intended for use in Iraq's nuclear weapon program.<sup>35</sup>

According to the NIE, “INR considers it far more likely that the tubes are intended for another purpose, most likely the production of artillery rockets.”<sup>36</sup>

These doubts about the use of the aluminum tubes were not conveyed by Administration officials, however. Instead, the aluminum tubes became one of the two principal pieces of information cited by the Administration to support the claim that Iraq was reconstituting its nuclear weapons program. President Bush, Vice President Cheney, Secretary Powell, and National Security Advisor Rice made 10 misleading statements in 9 public appearances about the significance of the aluminum tubes.

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<sup>30</sup> Central Intelligence Agency, *supra* note 7.

<sup>31</sup> National Intelligence Council, *supra* note 16.

<sup>32</sup> *U.N. Split Widens as Allies Dismiss Deadline on Iraq*, New York Times (Mar. 7, 2003).

<sup>33</sup> National Intelligence Council, *supra* note 16.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

For example, Ms. Rice stated on September 8, 2002: "We do know that there have been shipments going into . . . Iraq . . . of aluminum tubes that . . . are only really suited for nuclear weapons programs, centrifuge programs."<sup>37</sup> Similarly, Vice President Cheney said on September 8, 2002: "[Saddam Hussein] now is trying, through his illicit procurement network, to acquire the equipment he needs to be able to enrich uranium to make the bombs . . . [s]pecifically aluminum tubes."<sup>38</sup> These statements were misleading because they did not present the possibility that the tubes were suitable or intended for another purpose, or acknowledge that key U.S. experts doubted that the tubes were intended to make nuclear bombs.

In one instance, Secretary Powell did acknowledge that some experts disputed that the aluminum tubes were intended for nuclear uses. In his February 5, 2003, address before the United Nations, Secretary Powell stated, "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 US experts think they are intended to serve as rotors in centrifuges used to enrich uranium."<sup>39</sup> Even in that statement, however, Secretary Powell did not make clear that experts from the Department of Energy and the State Department's own intelligence division played a significant role in the analysis of this issue and in formal and deliberate dissents had disputed the view that the tubes would likely be used to enrich uranium.

On another occasion, Secretary Powell cited the tubes as evidence of pursuit of nuclear weapons, without noting that the intended use of the tubes was under dispute, asserting: "We also know that Iraq has tried to obtain high-strength aluminum tubes, which can be used to enrich uranium in centrifuges for a nuclear weapons program."<sup>40</sup>

By January 27, 2003, the International Atomic Energy Agency had reached the tentative conclusion that the aluminum tubes "would be consistent with the purpose stated by Iraq and, unless modified, would not be suitable for manufacturing centrifuges."<sup>41</sup> Following the occupation of Iraq, the Iraq Survey

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<sup>37</sup> *Late Edition with Wolf Blitzer*, CNN (Sept. 8, 2002).

<sup>38</sup> *Meet the Press*, NBC (Sept. 8, 2002).

<sup>39</sup> U.S. Department of State, *Remarks to the United Nations Security Council, Secretary Colin L. Powell* (Feb. 5, 2003).

<sup>40</sup> U.S. Department of State, *Press Conference with Secretary of State Colin Powell re: U.S. Reaction to Iraqi Arms Declaration* (Dec. 19, 2002).

<sup>41</sup> UN News Centre, *IAEA Chief: No Evidence So Far of Revived Iraqi Nuclear Arms Programme* (Jan. 27, 2003).

Group did not find evidence indicating that the tubes were intended for nuclear use. In his January 28, 2004, testimony, Dr. Kay announced: "It is my judgment, based on the evidence that was collected . . . that it's more probable that those tubes were intended for use in a conventional missile program, rather than in a centrifuge program."<sup>42</sup>

### 3. Claims about Uranium from Africa

Another significant component of the Administration's nuclear claims was the assertion that Iraq had sought to import uranium from Africa. As one of few new pieces of intelligence, this claim was repeated multiple times by Administration officials as proof that Iraq had reconstituted its nuclear weapons program. In total, the five Administration officials made misleading assertions about Iraq's attempts to obtain uranium from Africa in 7 statements in 6 public appearances.

In his State of the Union address on January 28, 2003, President Bush stated: "The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa. . . . Saddam Hussein has not credibly explained these activities. He clearly has much to hide."<sup>43</sup>

Other officials echoed this statement. In a January 23, 2003, *New York Times* op-ed piece, Ms. Rice argued that Iraq had lied in its December 2002 declaration, noting: "the declaration fails to account for or explain Iraq's efforts to get uranium from abroad."<sup>44</sup> In his opening remarks in his televised press conference on January 29, 2003, Secretary Rumsfeld stated, "[Saddam Hussein's] regime . . . recently was discovered seeking significant quantities of uranium from Africa."<sup>45</sup>

These claims that Iraq was seeking to import uranium were misleading. The documentary evidence behind the assertions was declared to be "not authentic" by the International Atomic Energy Agency.<sup>46</sup> An envoy, former Ambassador Joseph Wilson, was sent by the CIA to investigate the alleged purchase.<sup>47</sup> Ambassador Wilson concluded that it was "highly doubtful that any such

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<sup>42</sup> Testimony of David Kay, *supra* note 12.

<sup>43</sup> White House, *State of the Union Address* (Jan. 28, 2003).

<sup>44</sup> Condoleezza Rice, *Why We Know Iraq Is Lying*, *New York Times* (Jan. 23, 2003).

<sup>45</sup> *Press Conference with Donald Rumsfeld, General Richard Myers*, CNN (Jan. 29, 2003).

<sup>46</sup> *Some Evidence on Iraq Called Fake; U.N. Nuclear Inspector Says Documents on Purchases Were Forged*, *Washington Post* (Mar. 8, 2003).

<sup>47</sup> Joseph Wilson, *What I Didn't Find in Africa*, *New York Times* (July 6, 2003).

transaction had ever taken place,” and on his return, he provided detailed briefings to the CIA and to the State Department African Affairs Bureau.<sup>48</sup>

When evidence emerged that the importation claim was false, Ms. Rice claimed that the White House had no knowledge of these doubts. She asserted unequivocally that no senior White House officials were informed about questions about the uranium claim prior to its use in the State of the Union address. She stated that “[t]he intelligence community did not know at that time, or at levels that got to us . . . that there was serious questions about this report.”<sup>49</sup> As she put it on another occasion:

[H]ad there been even a peep that the agency did not want that sentence in or that George Tenet did not want that sentence in, that the Director of Central Intelligence did not want it in, it would have been gone.<sup>50</sup>

Ms. Rice's claims were simply false. The CIA sent two memos to the National Security Council — one of which was addressed to Ms. Rice personally — warning against including the claim in a speech by the President.<sup>51</sup> Director of Central Intelligence George Tenet also “argued personally” to Ms. Rice's deputy national security adviser, Stephen Hadley, “that the allegation should not be used” by the President.<sup>52</sup> Further, in the October 2002 NIE provided to top White House officials, the State Department's Bureau of Intelligence and Research had stated that claims that Iraq sought to acquire uranium in Africa were “highly dubious.”<sup>53</sup>

Ultimately, the White House was forced to admit its error. On July 9, 2003, White House spokesperson Ari Fleischer said that the statement about importing uranium from Africa “should not have risen to the level of a presidential speech.”<sup>54</sup> The White House minimized the significance of the Administration's use of the Niger claim, arguing that it was “only a small part of an

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<sup>48</sup> *Id.*

<sup>49</sup> *This Week With George Stephanopoulos*, ABC (June 8, 2003).

<sup>50</sup> *Face the Nation*, CBS (July 13, 2003).

<sup>51</sup> White House, *Dan Bartlett and Steve Hadley Hold Press Briefing*, *supra* note 6.

<sup>52</sup> *CIA Got Uranium Reference Cut in Oct.; Why Bush Cited It in Jan. Is Unclear*, *Washington Post* (July 13, 2003); see also White House, *Dan Bartlett and Steve Hadley Hold Press Briefing*, *supra* note 6.

<sup>53</sup> National Intelligence Council, *supra* note 16.

<sup>54</sup> White House, *Ari Fleischer Holds News Briefing* (July 9, 2003).

'overwhelming' case that Iraqi President Saddam Hussein posed a threat to the United States."<sup>55</sup>

### **C. Statements about Iraq's Chemical and Biological Weapons Programs**

President Bush, Vice President Cheney, Secretary Rumsfeld, Secretary Powell, and National Security Advisor Rice made misleading statements regarding Iraq's chemical and biological weapons programs in 61 public appearances. In these appearances, the five officials made 84 different misleading statements. These statements addressed three general topics: (1) Iraq's chemical and biological weapons, (2) Iraq's efforts to build unmanned aerial vehicles (UAVs), and (3) Iraq's mobile biological laboratories.

#### **1. Claims about Chemical and Biological Weapons**

Prior to the war, there were questions within the intelligence community about whether Iraq in fact possessed stockpiles of chemical and biological weapons. Because Iraq previously had such stockpiles, had used them in the past, and had not adequately demonstrated that all previously produced stockpiles had been destroyed, the intelligence community made an assessment in the October NIE that it was likely that Iraq continued to possess them. Because intelligence agencies had no direct evidence of such stockpiles, however, the conclusions in the October NIE were cast in the context of an intelligence "estimate." The NIE began its sections on chemical and biological weapons with the phrases "we assess" and "we judge." The NIE concluded that Iraq "probably" had stockpiled chemicals and "probably" had genetically engineered biological agents. The NIE also included major qualifiers, such as: "We lack specific information on many key aspects of Iraq's WMD programs."<sup>56</sup>

Other intelligence assessments specifically cited the uncertainty surrounding Iraq's possession of such stockpiles. In September 2002, the Defense Intelligence Agency (DIA) issued a report that concluded: "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."<sup>57</sup> The report also observed that "[a] substantial amount of Iraq's chemical warfare agents, precursors, munitions, and production equipment were destroyed between

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<sup>55</sup> *White House Admits CIA Warned It before Speech*, *supra* note 1.

<sup>56</sup> National Intelligence Council, *supra* note 16.

<sup>57</sup> Defense Intelligence Agency, *Iraq — Key WMD Facilities — An Operational Support Study* (Sept. 2002) (unclassified excerpts are available at <http://www.ceip.org/files/nonprolif/templates/article.asp?newsID=4928>).

1991 and 1998 as a result of Operation Desert Storm and UNSCOM (United Nations Special Commission) actions.”<sup>58</sup> While the report assessed that Iraq “probably” retained some “CW agents,” it warned that “we lack any direct information.”<sup>59</sup>

Despite these uncertainties among the intelligence officials, the five Administration officials made 45 misleading statements in 35 appearances about Iraq’s possession of chemical or biological weapons. Often these statements were misleading because they projected certainty about their claims. Secretary Powell, for example, claimed, “there is no doubt in our mind that he still has chemical weapons stocks.”<sup>60</sup> Secretary Rumsfeld stated: “He has at this moment stockpiles of chemical and biological weapons.”<sup>61</sup> Vice President Cheney asserted: “We know they have biological and chemical weapons.”<sup>62</sup> And President Bush said bluntly, “he’s got them.”<sup>63</sup>

Administration officials sometimes claimed to have specific details about stockpile locations and movements. In his speech to the United Nations, for example, Secretary Powell showed photographs of supposed Iraqi chemical stockpiles, stating: “How do I know that? How can I say that? Let me give you a closer look. Look at the image on the left. On the left is a close-up of one of the four chemical bunkers. The two arrows indicate the presence of sure signs that the bunkers are storing chemical munitions.”<sup>64</sup>

Secretary Rumsfeld was even more specific, claiming that the Iraqis were “moving them to different locations as often as every 12 to 24 hours and placing them in residential neighborhoods.”<sup>65</sup> He also made this statement: “We know where they are. They’re in the area around Tikrit and Baghdad and east, west, south, and north somewhat.”<sup>66</sup>

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

<sup>59</sup> *Id.*

<sup>60</sup> *Fox News Sunday*, Fox TV (Sept. 8, 2002).

<sup>61</sup> Testimony by U.S. Secretary of Defense Donald Rumsfeld, House Armed Services Committee (Sept. 18, 2002).

<sup>62</sup> White House, *Press Conference by Vice President Dick Cheney*, *supra* note 3.

<sup>63</sup> White House, *Remarks by the President at Missouri Welcome* (Nov. 4, 2002).

<sup>64</sup> U.S. Department of State, *supra* note 39.

<sup>65</sup> Department of Defense, *Donald Rumsfeld and Richard Myers Hold Regular Department of Defense Briefing* (Mar. 11, 2003).

<sup>66</sup> *This Week With George Stephanopoulos*, ABC (Mar. 30, 2003).

The five officials also drew selectively from individual intelligence sources. In 1995, Hussein Kamel, the Iraqi official who had been in charge of Iraq's weapons of mass destruction programs, defected and described how Iraq had violated U.N. resolutions in the early 1990s.<sup>67</sup> Administration officials cited these claims repeatedly. For example, President Bush said:

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. . . . This is a massive stockpile of biological weapons that has never been accounted for, and capable of killing millions.<sup>68</sup>

President Bush failed to disclose, however, that this same defector reported to U.N. inspectors that Iraq had destroyed all of its chemical and biological weapons stocks.<sup>69</sup>

Since the war ended, the Iraq Survey Group has reported that it is unlikely that chemical or biological stockpiles existed prior to the war. As Dr. Kay concluded: "I'm personally convinced that there were not large stockpiles of newly produced weapons of mass destruction. We don't find the people, the documents or the physical plants that you would expect to find if the production was going on."<sup>70</sup> Dr. Kay reported in October 2003 that "Iraq's large-scale capability to develop, produce, and fill new CW munitions was reduced — if not entirely destroyed — during Operation Desert Storm and Desert Fox, 13 years of UN sanctions and UN inspections."<sup>71</sup>

Director of Central Intelligence George Tenet echoed these findings: "It also appears that Iraq had the infrastructure and talent to resume production — but we have yet to find that it actually did so, nor have we found weapons."<sup>72</sup> His bottom

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<sup>67</sup> *How Saddam Happened*, Newsweek (Sept. 23, 2002).

<sup>68</sup> White House, *President Bush Outlines Iraqi Threat*, *supra* note 19.

<sup>69</sup> *The Defector's Secrets*, Newsweek (Mar. 3, 2003); *see also What Went Wrong*, Newsweek (Feb. 9, 2004).

<sup>70</sup> *Ex-Inspector Says CIA Missed Disarray in Iraqi Arms Program*, New York Times (Jan. 26, 2004).

<sup>71</sup> Statement by David Kay, *supra* note 24.

<sup>72</sup> Central Intelligence Agency, *supra* note 7.



line was that “we do not know if production took place — and just as clearly — we have not yet found biological weapons.”<sup>73</sup>

## 2. Claims about Unmanned Aerial Vehicles

Prior to the war, Administration officials raised the specter of Iraq using unmanned aerial vehicles (UAVs) to distribute chemical or biological weapons directly over the United States. Although there was agreement within the intelligence community that Iraq had a UAV program, there was a sharp split over whether these UAVs were designed to deliver chemical or biological weapons. The October NIE concluded that the UAV program was “probably” intended to deliver biological weapons. However, the government entity most knowledgeable about UAVs and their potential applications, the Air Force’s National Air and Space Intelligence Center, disagreed with this conclusion.<sup>74</sup> According to the NIE, the U.S. Air Force “does not agree that Iraq is developing UAVs primarily intended to be delivery platforms for chemical and biological (CBW) agents.” Instead, the Air Force experts asserted that “[t]he small size of Iraq’s new UAV strongly suggests a primary role of reconnaissance.”<sup>75</sup>

The five Administration officials did not acknowledge these doubts in their public statements, however. Instead, they made misleading assertions regarding the purpose of the UAVs in 5 statements in 5 public appearances.

For example, on October 7, 2002, just days before the October 10 and October 11, 2002, congressional votes on the Iraqi war resolution, President Bush claimed that “Iraq has a growing fleet of manned and unmanned aerial vehicles that could be used to disperse chemical or biological weapons.” He did not disclose that experts at the Air Force found such a use improbable. Instead, he highlighted the fear of Iraq’s UAVs being used “for missions targeting the United States.”<sup>76</sup> Such statements had an impact on members of Congress. For example, Senator Bill Nelson voted for the Iraq war resolution “precisely because of the administration’s UAV evidence.”<sup>77</sup> He explained:

I was told not only that [Hussein had weapons of mass destruction] and that he had the means to deliver them through unmanned aerial vehicles, but that he had the capability of transporting those UAVs outside of Iraq

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<sup>73</sup> *Id.*

<sup>74</sup> *Air Force Analysts Feel Vindicated on Iraqi Drones*, Washington Post (Sept. 26. 2003).

<sup>75</sup> National Intelligence Council, *supra* note 16.

<sup>76</sup> White House, *President Bush Outlines Iraqi Threat*, *supra* note 19.

<sup>77</sup> *A Flawed Argument in the Case for War*, Washington Post (Feb. 1, 2004).

and threatening the homeland here in America, specifically by putting them on ships off the eastern seaboard. . . . I thought there was an imminent threat.<sup>78</sup>

In his address to the United Nations, Secretary Powell asserted: "UAVs are well suited for dispensing chemical and biological weapons. There is ample evidence that Iraq has dedicated much effort to developing and testing spray devices that could be adapted for UAVs."<sup>79</sup> In making his presentation to the U.N., Secretary Powell showed a photo of an "illustrative" UAV, which he suggested was well-suited for spraying chemical or biological weapons over the United States.<sup>80</sup> This presentation affected members of Congress. Senator Dianne Feinstein stated that of the various pieces of evidence presented by Secretary Powell, "the most compelling to me was the unmanned aerial vehicle and the development of that with spray tanks. And he kind of laid down the fact that this could be in our country and there was a possibility that this might be used against the United States."<sup>81</sup>

President Bush later highlighted Secretary Powell's presentation, claiming: "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. . . . A UAV launched from a vessel off the American coast could reach hundreds of miles inland."<sup>82</sup>

The Iraq Survey Group found little to substantiate these claims. According to Dr. Kay's January 28, 2004, testimony, Iraq's UAV program "was not a strong point" because it was only "theoretically possible" to have "snuck one of those on a ship off the East Coast of the United States that might have been able to deliver a small amount someplace." He found only that "at least one of those families of UAVs" was a "descendent" of another model that once had a "spray tank on it." In his assessment, there was no "existing deployment capability at that point for any sort of systematic military attack."<sup>83</sup>

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<sup>78</sup> *Id.*

<sup>79</sup> U.S. Department of State, *supra* note 39.

<sup>80</sup> *Id.*

<sup>81</sup> *NBC News Special Report: The Case Against Iraq*, NBC (Feb. 5, 2003).

<sup>82</sup> White House, *President Bush: "World Can Rise to This Moment"* (Feb. 6, 2003).

<sup>83</sup> Testimony of David Kay, *supra* note 12.

### 3. Claims about Mobile Biological Laboratories

In April and early May 2003, military forces found mobile trailers in Iraq.<sup>84</sup> Although intelligence experts disputed the purpose of the trailers, Administration officials repeatedly asserted that they were mobile biological weapons laboratories. In total, President Bush, Vice President Cheney, Secretary Rumsfeld, Secretary Powell, and National Security Advisor Rice made 34 misleading statements about the trailers in 27 separate public appearances.

Shortly after the trailers were found, the CIA and DIA issued an unclassified white paper evaluating the trailers.<sup>85</sup> The white paper was released without coordination with other members of the intelligence community, however. It was disclosed later that engineers from DIA who examined the trailers concluded that they were most likely used to produce hydrogen for artillery weather balloons.<sup>86</sup> A former senior intelligence official reported that "only one of 15 intelligence analysts assembled from three agencies to discuss the issue in June endorsed the white paper conclusion."<sup>87</sup>

Despite these doubts within the intelligence community, the five officials repeatedly misled Congress and the public about the trailers by asserting without qualification that they were proof of Iraq's biological weapons program. President Bush made perhaps the most prominent misleading statement on this matter when he proclaimed:

We found the weapons of mass destruction. We found biological laboratories. You remember when Colin Powell stood up in front of the world, and he said, Iraq has got laboratories, mobile labs to build biological weapons. They're illegal. They're against the United Nations resolutions, and we've so far discovered two. And we'll find more weapons as time goes on. But for those who say we haven't found the banned manufacturing devices or banned weapons, they're wrong, we found them.<sup>88</sup>

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<sup>84</sup> Central Intelligence Agency and Defense Intelligence Agency, *Iraqi Mobile Biological Warfare Agent Production Plants* (May 28, 2003) (online at [www.cia.gov/cia/reports/iraqi\\_mobile\\_plants/paper\\_w.pdf](http://www.cia.gov/cia/reports/iraqi_mobile_plants/paper_w.pdf)).

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

<sup>86</sup> *Iraqi Trailers Said to Make Hydrogen, Not Biological Arms*, New York Times (Aug. 9, 2003).

<sup>87</sup> *Powell's Case, a Year Later: Gaps in Picture of Iraq Arms*, New York Times (Feb. 1, 2004).

<sup>88</sup> White House, *Interview of the President by TVP. Poland* (May 29, 2003).

Similarly, Secretary Powell's comments about the trailers frequently asserted with certainty that the trailers were biological weapons laboratories. For example:

- On May 21, 2003, Secretary Powell said: "The intelligence community has really looked hard at these vans, and we can find no other purpose for them. Although you can't find actual germs on them, they have been cleaned and we don't know whether they have been used for that purpose or not, but they were certainly designed and constructed for that purpose. And we have taken our time on this one because we wanted to make sure we got it right. And the intelligence community, I think, is convinced now that that's the purpose they served."<sup>89</sup>
- On May 22, 2003, Secretary Powell said, "So far, we have found the biological weapons vans that I spoke about when I presented the case to the United Nations on the 5th of February, and there is no doubt in our minds now that those vans were designed for only one purpose, and that was to make biological weapons."<sup>90</sup>

The doubts about the trailers were confirmed by the work of the Iraq Survey Group. According to Dr. Kay's January 28, 2004, testimony, "the consensus opinion is that when you look at those two trailers, while [they] had capabilities in many areas, their actual intended use was not for the production of biological weapons."<sup>91</sup> In a separate interview, Dr. Kay explained that the trailers "were actually designed to produce hydrogen for weather balloons, or perhaps to produce rocket fuel."<sup>92</sup>

#### **D. Statements about Iraq's Support of al Qaeda**

Another key component of the case for going to war against Iraq was the claim that Iraq was supporting al Qaeda. As was the case with other featured claims, the al Qaeda claims were disputed by intelligence officials within the Administration. Yet President Bush, Vice President Cheney, Secretary Rumsfeld, Secretary Powell, and National Security Advisor Rice regularly failed to

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<sup>89</sup> U.S. Department of State, *Remarks with Bahrain's Crown Prince Shaikh Salman bin Hamad Al-Khalifa After Meeting* (May 21, 2003).

<sup>90</sup> U.S. Department of State, *Interview with French Television 1* (May 22, 2003).

<sup>91</sup> Testimony of David Kay, *supra* note 12.

<sup>92</sup> *Ex-Inspector Says CIA Missed Disarray in Iraqi Arms Program*, *supra* note 70 (paraphrasing Dr. Kay). According to recent media accounts, United States intelligence officials never actually interviewed the source who provided the original tip that Iraq had mobile bioweapons trailers. *Experts Say U.S. Never Spoke to Source of Tip on Bioweapons; Information from Iraqi Relayed by Foreign Agency*, *CIA Notes*, Washington Post (Mar. 5, 2004).

acknowledge these doubts or the weaknesses in the case linking Iraq and al Qaeda. They made 61 misleading statements about the strength of the Iraq-al Qaeda alliance in 52 public appearances.

Well before the war on Iraq, the October 2002 National Intelligence Estimate made clear that the U.S. intelligence community had serious doubts about the threat of Iraq arming al Qaeda. In its section on "Confidence Levels for Selected Key Judgements in this Estimate," the NIE gave a "Low Confidence" rating to the notion of "Whether in desperation Saddam would share chemical or biological weapons with Al Qa'ida."<sup>93</sup> The discussion of this possibility in the NIE contained highly qualified language: "Saddam, if sufficiently desperate, might decide that only an organization such as al-Qa'ida . . . could perpetuate the type of terrorist attack that he would hope to conduct."<sup>94</sup> The NIE also reported that "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 cause for making war."<sup>95</sup>

Director of Central Intelligence Tenet stated in an October 2002 letter that there were intelligence reports of contacts between al Qaeda and Iraq. At the same time, however, he asserted clear qualifiers for this information: "Our understanding of the relationship between Iraq and al-Qa'ida is evolving and is based on sources of varying reliability."<sup>96</sup> Senators who were briefed by intelligence officials in the fall of 2002 expressed skepticism about the significance of the link. For example, Senator Jeffords on October 8, 2002, stated, "While there is talk of cooperation between Iraq and al-Qaeda, and I don't doubt that there has been some cooperation, I have not seen any hard evidence of close cooperation."<sup>97</sup> According to another account:

Sen. Richard J. Durbin . . . said some classified information he had seen did not support the administration's portrayal of the Iraqi threat. "It's troubling to have classified information that contradicts statements made

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<sup>93</sup> National Intelligence Council, *supra* note 16.

<sup>94</sup> *Id.* (emphasis added).

<sup>95</sup> *Id.*

<sup>96</sup> *Threats and Responses; CIA Letter to Senate on Baghdad's Intentions*, New York Times (Oct. 9, 2002) (reprinting text of October 7, 2002, letter from Mr. Tenet to Senator Bob Graham, in which Mr. Tenet says, "We have solid reporting of senior level contacts between Iraq and al-Qa'ida going back a decade," and "credible information indicates that Iraq and al-Qa'ida have discussed safe haven and reciprocal non-aggression").

<sup>97</sup> Statement of Senator Jim Jeffords, *Senate Resolution Authorizing the Use of Force against Iraq* (Oct. 8, 2002).

by the administration," Durbin said. "There's more they should share with the public." Durbin would not be more specific, but he did say the committee had received the views of some analysts who do not share the administration's conclusion that Iraq was an urgent threat with important links to al-Qaeda terrorists.<sup>98</sup>

Journalists also reported that many intelligence officials within the Administration doubted the significance of reported contacts between Iraq and al Qaeda. According to one report:

[A]nalytists at the C.I.A. . . . believed that the evidence showed some contacts between Baghdad and the terrorist organization, but not an operational alliance. . . . [A]t the C.I.A., many analysts believed that Mr. bin Laden saw Mr. Hussein as one of the corrupt secular Arab leaders who should be toppled.<sup>99</sup>

Despite the doubts of many intelligence analysts, the five Administration officials regularly asserted that there was a close relationship between Iraq and al Qaeda. For example:

- In a November 7, 2002, speech, President Bush stated: Saddam Hussein is "a threat because he is dealing with Al Qaida. . . . [A] true threat facing our country is that an Al Qaida-type network trained and armed by Saddam could attack America and not leave one fingerprint."<sup>100</sup>
- In his January 28, 2003, State of the Union address, President Bush stated: "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."<sup>101</sup>
- In his February 5, 2003, remarks to the United Nations, Secretary of State Colin Powell stated: "what I want to bring to your attention today is the potentially much more sinister nexus between Iraq and the al Qaeda terrorist network, a nexus that combines classic terrorist organizations and modern methods of murder. Iraq today harbors a deadly terrorist network

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<sup>98</sup> *Democrats Urge Focus on Terror Instead of Iraq*, Philadelphia Inquirer (Oct. 5, 2002).

<sup>99</sup> *The Struggle for Iraq: Intelligence; Hussein Warned Iraqis to Beware Outside Fighters, Document Says*, New York Times (Jan. 14, 2004).

<sup>100</sup> White House, *President Outlines Priorities* (Nov. 7, 2002).

<sup>101</sup> White House, *State of the Union*, *supra* note 43.

headed by Abu Musab al-Zarqawi an associate and collaborator of Usama bin Laden and his al-Qaida lieutenants.”<sup>102</sup>

- In remarks on May 1, 2003, announcing the end of major combat operations in Iraq, President Bush stated: “The battle of Iraq is one victory in a war on terror that began on September the 11, 2001 — and still goes on. . . . [T]he liberation of Iraq . . . removed an ally of al Qaeda.”<sup>103</sup>

Vice President Cheney's statements on this topic repeatedly cited reports of a specific alleged Iraq-al Qaeda contact: a meeting between Mohammed Atta, one of the September 11 hijackers, and a senior Iraqi official in Prague a few months before September 11, 2001. For example, Vice President Cheney stated on September 14, 2003:

With respect to 9/11, of course, we've had the story that's been public out there. The Czechs alleged that Mohammed Atta, the lead attacker, met in Prague with a senior Iraqi intelligence official five months before the attack, but we've never been able to develop anymore of that yet either in terms of confirming it or discrediting it. We just don't know.<sup>104</sup>

The Vice President's assertions about this meeting omitted key information. He did not acknowledge that the CIA and FBI had concluded before the war in Iraq that “the meeting probably did not take place”;<sup>105</sup> that Czech government officials had developed doubts regarding whether this meeting occurred;<sup>106</sup> or that American records indicate that Mr. Atta was in Virginia Beach, Virginia, at the time of the purported meeting.<sup>107</sup>

Assessments following the war further highlighted the tenuous nature of the Administration's assertions about an Iraq-al Qaeda alliance. According to the *New York Times*, “Since American forces toppled the Hussein government and the United States gained access to captured Iraqi officials and Iraqi files, the C.I.A. has not yet uncovered evidence that has altered its prewar assessment concerning

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<sup>102</sup> U.S. Department of State, *supra* note 39.

<sup>103</sup> White House, *President Bush Announces Major Combat Operations in Iraq Have Ended* (May 1, 2003).

<sup>104</sup> *Meet the Press*, *supra* note 21.

<sup>105</sup> *A Region Inflamed: Inquiry; Iraqi Agent Denies He Met 9/11 Hijacker in Prague Before Attacks on the U.S.*, *New York Times* (Dec. 13, 2003).

<sup>106</sup> *Id.*

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

the connections between Mr. Hussein and Osama bin Laden, the leader of al Qaeda, officials said.”<sup>108</sup>

Consistent with this view, during Dr. Kay's testimony before the Senate Armed Services Committee on January 28, 2004, the following exchange occurred between Senator Warner and Dr. Kay:

Senator Warner: Any evidence with regard to participation by either Saddam Hussein or his principal henchmen in the WMD-sharing with al Qaeda or any other terrorist organizations?

Dr. Kay: Senator Levin — Senator Warner, there is no evidence that I can think of that I know of.<sup>109</sup>

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## V. MISLEADING STATEMENTS BY INDIVIDUAL OFFICIALS

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### A. President Bush

President Bush made 55 misleading statements about the threat posed by Iraq in 27 separate public statements or appearances.

Of the 55 misleading statements by President Bush, 4 claimed that Iraq posed an urgent threat; 14 exaggerated Iraq's efforts to develop nuclear weapons; 18 overstated Iraq's chemical or biological weapons capacity; and 19 misrepresented Iraq's links to al Qaeda.

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<sup>108</sup> *A Region Inflamed*, *supra* note 105. Last October, Undersecretary for Defense Policy Douglas J. Feith sent a memo to the Senate Intelligence Committee regarding the connection between Iraq and al Qaeda. In November, the *Weekly Standard* published the memo's classified annex, claiming that its list of Iraq-al Qaeda contacts proved “an operational relationship from the early 1990s” and that “there can no longer be any serious argument about whether Saddam Hussein's Iraq worked with Osama bin Laden and al Qaeda to plot against Americans.” *Case Closed*, *Weekly Standard* (Nov. 24, 2003). The Defense Department, however, immediately issued an official statement that “[t]he classified annex was not an analysis of the substantive issue of the relationship between Iraq and al Qaeda, and it drew no conclusions.” U.S. Department of Defense, *News Release: DOD Statement on News Reports of al-Qaeda and Iraq Connections* (Nov. 15, 2003). Director of Central Intelligence George Tenet also recently testified regarding the Feith memo, stating that the CIA “did not agree with the way the way the data was characterized in that document.” Testimony of Director of Central Intelligence George Tenet before the Senate Armed Services Committee, *Hearing on National Security Threats* (Mar. 9, 2004).

<sup>109</sup> Testimony of David Kay, *supra* note 12.



On October 7, 2002, just days before the October 10 and October 11, 2002, congressional votes on the Iraq war resolution, President Bush gave an address in Cincinnati, Ohio, about the threat posed by Iraq. In this speech, President Bush made 11 misleading statements about Iraq, the highest number of misleading statements in any single appearance by any of the five officials. In this single appearance, President Bush made misleading statements about Iraq's nuclear capabilities, Iraq's efforts to procure aluminum tubes, Iraq's chemical and biological capabilities, and Iraq's connection to al Qaeda.

Some of the misleading statements made by President Bush included the following:

- “On its present course, the Iraqi regime is a threat of unique urgency. . . . It has developed weapons of mass death.”<sup>110</sup>
- “The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.”<sup>111</sup>
- “The liberation of Iraq . . . removed an ally of al Qaeda.”<sup>112</sup>
- “We found the weapons of mass destruction. . . . [F]or those who say we haven't found the banned manufacturing devices or banned weapons, they're wrong, we found them.”<sup>113</sup>

## **B. Vice President Cheney**

Vice President Cheney made 51 misleading statements about the threat posed by Iraq in 25 separate public statements or appearances.

Of the 51 misleading statements by Vice President Cheney, 1 claimed that Iraq posed an urgent threat; 22 exaggerated Iraq's efforts to develop nuclear weapons; 7 overstated Iraq's chemical or biological weapons capacity; and 21 misrepresented Iraq's links to al Qaeda.

Some of the misleading statements made by Vice President Cheney included the following:

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<sup>110</sup> White House, *President, House Leadership Agree on Iraq Resolution*, *supra* note 8.

<sup>111</sup> White House, *State of the Union*, *supra* note 43.

<sup>112</sup> White House, *President Bush Announces*, *supra* note 103.

<sup>113</sup> White House, *Interview of the President*, *supra* note 88.

- “[W]e do know, with absolute certainty, that he is using his procurement system to acquire the equipment he needs in order to enrich uranium to build a nuclear weapon.”<sup>114</sup>
- Saddam Hussein “had an established relationship with al Qaeda.”<sup>115</sup>
- “[W]e believe he has, in fact, reconstituted nuclear weapons.”<sup>116</sup>

### C. Secretary Rumsfeld

Secretary Rumsfeld made 52 misleading statements about the threat posed by Iraq in 23 separate public statements or appearances.

Of the 52 misleading statements by Secretary Rumsfeld; 5 claimed that Iraq posed an urgent threat; 18 exaggerated Iraq’s efforts to develop nuclear weapons; 21 overstated Iraq’s chemical or biological weapons capacity; and 8 misrepresented Iraq’s links to al Qaeda.

Some of the misleading statements made by Secretary Rumsfeld included the following:

- “Now transport yourself forward a year, two years, or a week, or a month, and if Saddam Hussein were to take his weapons of mass destruction and transfer them, either use himself, or transfer them to the Al-Qaeda, and somehow the Al-Qaeda were to engage in an attack on the United States . . . with a weapon of mass destruction you’re not talking about 300, or 3,000 people potentially being killed, but 30,000, or 100,000 . . . human beings.”<sup>120</sup>

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<sup>114</sup> *Meet the Press*, *supra* note 38.

<sup>115</sup> White House, *Remarks by the Vice President to the Heritage Foundation* (Oct. 10, 2003).

<sup>116</sup> *Meet the Press*, *supra* note 20.

<sup>117</sup> *Meet the Press*, *supra* note 38.

<sup>118</sup> White House, *Remarks by the Vice President at the Air National Guard Senior Leadership Conference* (Dec. 2, 2002).

<sup>119</sup> White House, *Remarks by the Vice President*, *supra* note 115.

<sup>120</sup> U.S. Department of Defense, *supra* note 11.

- “[Saddam Hussein’s] regime . . . recently was discovered seeking significant quantities of uranium from Africa.”<sup>121</sup>
- “We said they had a nuclear program. That was never any debate.”<sup>123</sup>

#### **D. Secretary Powell**

Secretary Powell made 50 misleading statements about the threat posed by Iraq in 34 separate public statements or appearances.

Of the 50 misleading statements by Secretary Powell, 1 claimed that Iraq posed an urgent threat; 10 exaggerated Iraq’s efforts to develop nuclear weapons; 32 overstated Iraq’s chemical or biological weapons capacity; and 7 misrepresented Iraq’s links to al Qaeda.

Sometimes Secretary Powell used caveats and qualifying language in his public statements. For example, on March 9, 2003, he said, “Well with respect to the aluminum tubes, we still believe the case is out. The CIA has done a great deal of analysis on those tubes. They are not persuaded they were just for rockets. And, in fact, another nation this week, a European nation, came forward with some additional information that still, I think, leaves it an open question as to what the purpose of those tubes was.”<sup>124</sup> Secretary Powell’s acknowledgement of differences in this example was not an unqualified statement that only mentioned one side of an intelligence debate.

On numerous other occasions, however, Secretary Powell made unconditional statements about the threats posed by Iraq without disclosing the doubts of intelligence officials. Some of the misleading statements he made included the following:

- “Iraq is now concentrating . . . on developing and testing smaller UAVs. . . . UAVs are well suited for dispensing chemical and biological weapons.”<sup>125</sup>

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<sup>121</sup> *Press Conference with Donald Rumsfeld, supra* note 45.

<sup>122</sup> U.S. Department of Defense, *supra* note 11.

<sup>123</sup> *This Week With George Stephanopoulos, supra* note 23.

<sup>124</sup> *Meet the Press*, NBC (Mar. 9, 2003).

<sup>125</sup> U.S. Department of State, *supra* note 39.

- “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.”<sup>126</sup>
- “So far, we have found the biological weapons vans that I spoke about when I presented the case to the United Nations on the 5th of February, and there is no doubt in our minds that those vans were designed for only one purpose, and that was to make biological weapons.”<sup>127</sup>

## **E. National Security Advisor Rice**

Ms. Rice made 29 misleading statements about the threat posed by Iraq in 16 separate public statements or appearances.

Of the 29 misleading statements by Ms. Rice, 17 concerned Iraq's efforts to develop nuclear weapons; 6 overstated Iraq's chemical or biological weapons capacity; and 6 misrepresented Iraq's links to al Qaeda.

Some of the misleading statements made by Ms. Rice included the following:

- “We do know that [Saddam Hussein] is actively pursuing a nuclear weapon.”<sup>128</sup>
- “We do know that there have been shipments going into . . . Iraq, for instance, of aluminum tubes that really are only suited to — high quality aluminum tools that are only really suited for nuclear weapons programs, centrifuge programs.”<sup>130</sup>
- “[T]he declaration fails to account for or explain Iraq's efforts to get uranium from abroad.”<sup>131</sup>

Ms. Rice made significantly more statements that were false — 8 — than any of the other four officials. Many of these statements came in June and July 2003

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<sup>126</sup> U.S. Department of State, *Secretary of State Powell, Remarks at the World Economic Forum* (Jan. 26, 2003).

<sup>127</sup> U.S. Department of State, *supra* note 90.

<sup>128</sup> *Late Edition with Wolf Blitzer, supra* note 37.

<sup>129</sup> Condoleezza Rice, *supra* note 44.

<sup>130</sup> *Late Edition with Wolf Blitzer, supra* note 37.

<sup>131</sup> Condoleezza Rice, *supra* note 44.

when questions were being raised about why President Bush asserted in his State of the Union address that Iraq was seeking to import uranium from Africa. Ms. Rice repeatedly stated during this period that no one in the White House was informed of the doubts about this uranium claim. For example, she stated:

- “We did not know at the time — no one knew at the time, in our circles — maybe someone knew down in the bowels of the agency, but no one in our circles knew that there were doubts and suspicions that this might be a forgery.”<sup>132</sup>
- “[H]ad there been even a peep that the agency did not want that sentence in or that George Tenet did not want that sentence in, that the director of Central Intelligence did not want it in, it would have been gone.”<sup>133</sup>

These statements were simply false. As explained above, the CIA had repeatedly communicated its objections to White House officials, including Ms. Rice.<sup>134</sup>

## VI. CONCLUSION

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Because of the gravity of the subject and the President's unique access to classified information, members of Congress and the public expect the President and his senior officials to take special care to be balanced and accurate in describing national security threats. It does not appear, however, that President Bush, Vice President Cheney, Secretary Rumsfeld, Secretary Powell, and National Security Advisor Rice met this standard in the case of Iraq. To the contrary, these five officials repeatedly made misleading statements about the threat posed by Iraq. In 125 separate appearances, they made 11 misleading statements about the urgency of Iraq's threat, 81 misleading statements about Iraq's nuclear activities, 84 misleading statements about Iraq's chemical and biological capabilities, and 61 misleading statements about Iraq's relationship with al Qaeda.

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<sup>132</sup> *Meet the Press*, NBC (June 8, 2003).

<sup>133</sup> *Face the Nation*, CBS (July 11, 2003).

<sup>134</sup> See White House, *Dan Bartlett and Steve Hadley Hold Press Briefing*, *supra* note 6.