Legal Analysis

Statutory Analysis

Misleading Congress and the American Public Concerning the Decision to go to War, Determination to Go to War Before Congressional Authorization

Our investigation has found that President Bush and members of his Administration made numerous public statements to the effect that a decision had not been made to invade Iraq, when in fact the record indicates that such a decision had been made. We have found substantial evidence that these individuals have Conspired to Defraud the United States in violation of 18 U.S.C. §371.

Among other things, we have found: Before Mr. Bush was elected President, he saw Saddam Hussein as "the guy who tried to kill my dad," and numerous key members of his Administration had called for a military invasion of Iraq. Immediately after the September 11 attacks, President Bush and members of his Administration displayed an immediate inclination to blame Iraq – the President asked Richard Clarke to determine if Hussein is "linked in any way;" White House officials instructed Wesley Clarke to state that the attack is "connected to Saddam Hussein;" and Undersecretary of Defense Douglas Feith proposed that the U.S. select "a non al-Qaeda target like Iraq." The Downing Street Minutes provide unrebutted documentary evidence that in the spring and summer of 2002 it was understood by the Blair government that the Bush Administration had irrevocably decided to invade Iraq. These documents reveal that President Bush had told Prime Minster Blair "when we have dealt with Afghanistan, we must come back to Iraq" (Fall, 2001); "Condi's enthusiasm for regime change is undimmed" (March 14, 2002); the U.S. has "assumed regime change as a means of eliminating Iraq's WMD threat" (March 25, 2002); and "Bush wanted to remove Saddam through military action, justified by the conjunction of terrorism and WMD" (July 23, 2002). (All quotes in this section of the Report are derived from the body of the Report.)

Among other things, we have also found: The "marketing" campaign for the war which included the creation of the so-called "White House Iraq Group;" the "rollout of speeches and documents;" the release of a white paper inaccurately describing a "grave and gathering danger" of Iraq's allegedly "reconstituted" nuclear weapons program; and the deliberate downplaying of the risks of occupation. The plan by which the Bush and Blair Administration sought to use the UN to "wrongfoot Saddam on the inspectors and the UN SCRs [Security Council Resolutions]" in the winter of 2002 and spring of 2003, constitutes further evidence that the decision to invade Iraq had been made; this is reflected by the fact that Defense Policy Board Member, Richard Perle admitted the U.S. "would attack Iraq even if UN inspectors fail to find weapons;" Vice President Cheney reportedly admitted to Hans Blix that the U.S. was

"ready to discredit inspectors in favor of disarmament;" and President Bush was "infuriated" by reports of Iraq's cooperating with UN inspectors.

It is important to note that the phrase "defraud the United States" in 18 U.S.C § 371 is broadly applicable, and there is ample precedent for applying the law to false and misleading statements by high government officials. In *Hammerschmidt v. United States*, the Supreme Court held that the law applies to those who "interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest. It is not necessary that the Government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicanery or the overreaching of those charged with carrying out the governmental intention." This statute has been used in the prosecution of numerous Administration and military officials in the Watergate and Iran-Contra scandal, with Judge Walsh writing in his final report on Iran-Contra that "[f]raud is criminal even when those who engage in the fraud are Government officials pursuing presidential policy." For a complete description and analysis of this and other statutes and standards applicable in this matter, see Exhibit A, "Relevant Law and Standards."

Unauthorized War Actions and Provocations

Our investigation has found that there is substantial evidence the Bush Administration redeployed military assets in the immediate vicinity of Iraq and conducted bombing raids on Iraq in 2002 in possible violation of the War Powers Resolution, Pub. L. No. 93-148, and laws prohibiting the Misuse of Government Funds, 31 U.S.C. § 1301.

Among other things, we have found: A military commander told Senator Bob Graham in February 2002 that "[w]e are moving military and intelligence personnel and resources out of Afghanistan to get ready for a future war in Iraq;" and "[b]y the end of July [2002], Bush had approved some 30 projects that would eventually cost $700 million." The bombing campaign engaged in by the U.S. and Great Britain in 2002 and early 2003 involved more than 21,000 sorties and hundreds of thousands of pounds of bombs, has been described as "a full air offensive;" a former U.S. combat veteran stated that based on what he had witnessed, "[t]he war had already begun:" and Allied Commander Tommy Franks admitted the 2002 bombing operation was designed to "degrade" the Iraqi air defenses.

Misstating and Manipulating the Intelligence to Justify Preemptive War

Links to September 11 and al Qaeda

Our investigation has found that President Bush and members of his Administration made numerous knowingly or recklessly false statements regarding

linkages between Iraq, terrorism and the September 11 attacks, and also sought to manipulate intelligence to support these statements. This includes misstatements concerning general linkages between Iraq and al Qaeda; an alleged meeting between Mohammed Atta and Iraqi Intelligence officials; and allegations that Iraq was training al Qaeda members to use chemical and biological weapons. We have found substantial evidence that the knowing and reckless false statements and intelligence manipulation by these individuals constitutes a Conspiracy to Defraud the United States in violation of 18 U.S.C. § 371.

With regard to general linkages between Iraq and al Qaeda, members of the Bush Administration ignored at least five separate reports from within their own Administration. These include a report shortly after September 11 prepared by Counterterrorism Coordinator Richard Clarke finding no connection with Iraq that was "bounced back," saying "[w]rong answer ... . Do it again;" a September 21, 2001 classified intelligence briefing that "the U.S. intelligence community had no evidence linking the Iraqi regime of Saddam Hussein to the attacks and that there was scant credible evidence that Iraq had any significant collaborative ties with Al Qaeda;" a June 21, 2002 CIA report which found "no conclusive evidence of cooperation on specific terrorist operations;" the October 2002 NIE, which gave a "Low Confidence" rating to the notion of "[w]hether in desperation Saddam would share chemical or biological weapons with Al Qa'ida;" and a January, 2003 CIA report that the "Intelligence Community has no credible information that Baghdad had foreknowledge of the 11 September attacks or any other al-Qaida strike." Given this record, it is particularly hard to justify Administration statements such as Secretary Rumsfeld's September 22, 2002 claim that he had "bulletproof" evidence of ties between Saddam and al Qaeda.

The evidence that members of the Bush Administration sought to manipulate and pressure intelligence officials on this linkage includes Deputy Director of the CIA Richard Kerr's report that people at the CIA have stated they have been "pushed too hard" on this point and felt "too much pressure;" a CIA ombudsman who reported unprecedented "hammering" on this issue; and an FBI official who stated that the "Bush administration...was misleading the public in implying there was a close connection [between Iraq and al Qaeda]."

We also have found substantial evidence that Vice President Cheney's December 9, 2001 statement that the meeting between Mohammed Atta and an Iraqi intelligence official in Prague had been "pretty well confirmed" was either knowingly or recklessly false. This includes the fact that Czech government officials had expressed doubts the meeting had occurred; both the CIA and FBI had concluded that "the meeting probably did not take place;" and U.S. records indicated that Mr. Atta was in Virginia Beach, Virginia at the time of the meeting. There is also substantial evidence that the Vice President's office put undue pressure on the CIA to substantiate this meeting that did not occur, with the Deputy Director of the CIA insisting to Mr. Libby, "I'm not going back to the well on this. We've done our work."

There is also substantial evidence that statements by President Bush on October 7, 2002 that "Iraq has trained al Qaeda members in bomb-making and poisons and deadly gases;" and Secretary Powell on February 5, 2003, "trac[ing] the story of a senior terrorist operative telling how Iraq provided training in these weapons to Al-Quaeda;" with both saying this relationship goes back for "decades." were either knowingly or recklessly false. Among other things, we have found that a recently declassified DIA report from February 2002 indicated that the source of this information, Ibn al-Shaykh al-Libi, "was intentionally misleading the debriefers in making these claims;" that it was unlikely any relationship between Iraq and al Qaeda went back decades since "Saddam's regime is intensely secular and wary of Islamic revolutionary movements;" a classified CIA report found that Mr. al-Libi was "not in a position to know if any training had taken place;" and Administration officials knew or should have known he "fabricated" his statements to avoid torture.

Resumed Efforts to Acquire Nuclear Weapons

Our investigation has found that President Bush and members of his Administration made knowing or recklessly false statements regarding Iraq's effort to acquire nuclear weapons, including general claims regarding such acquisition; assertions based on claims by Saddam Hussein's son-in-law; and a statement by Mr. Bush that Iraq was within six months of obtaining a nuclear weapon. We have identified substantial evidence that these actions may constitute a Conspiracy to Defraud the United States in violation of 18 U.S.C. § 371.

The Bush Administration ignored numerous intelligence reports indicating that there was no credible evidence of an ongoing nuclear program in Iraq, including a 1999 IAEA report that there was "no indication that Iraq possesses nuclear weapons ... or any practical capability ... for the production of such material;" British intelligence officials confirmation that Iraq's nuclear weapon's program was "effectively frozen;" the pre-2002 CIA NIE indicating that Iraq did not have and was not trying to reacquire nuclear weapons; and the State Department INR's finding that it lacked "persuasive evidence that Baghdad has launched a coherent effort to reconstitute its nuclear weapons program." Given this record, it is difficult to defend statements such as Mr. Cheney's March 16, 2003 declaration that "we believe [Saddam] has, in fact, reconstituted nuclear weapons."

There is also substantial evidence that the Vice President's statement on August 26, 2002 that the Administration has learned about Hussein's efforts to reacquire nuclear weapons from "Saddam's own son-in-law," Hussein Kamel al-Majid, was knowingly or recklessly false. This is first because Kamel was killed in February, 1996, so he "could not have sourced what U.S. officials 'now know;'" and second because Kamel's testimony to the IAEA was "the reverse of Cheney's description" which was debriefed to U.S. officials.

President Bush's statement on September 7, 2002 that the IAEA had issued a new report that Iraq was "six months away from developing a [nuclear] weapon also appears to be knowingly or recklessly false and misleading, as *The Washington Post* found "there was no new IAEA report . . . . Bush cast as present evidence the contents of a report from 1996, updated in 1998 and 1999. In those accounts, the IAEA described the history of an Iraqi nuclear weapons program that arms inspectors had systematically destroyed."

Aluminum Tubes

Our investigation has found that President Bush and members of his Administration made numerous knowingly and recklessly false statements that Iraq was seeking to acquire aluminum tubes in order to build a uranium centrifuge and leaked classified information to the press in order to further buttress their arguments for war. There is substantial evidence that these knowing and reckless statements constitute a Conspiracy to Defraud the United States in violation of 18 U.S.C. Sec. 371, and the leak of the classified information constitutes Gathering, Transmitting or Losing Defense Information and Gathering or Delivering Defense Information to Aid a Foreign Government, in violation of 18 U.S.C. § 793-94.

Members of the Bush Administration appear to have ignored reports and information provided by at least five agencies and foreign intelligence sources. These include several reports by the Department of Energy which found that the tubes were "too narrow, too heavy, to long – to be of much practical use in a centrifuge;" the State Department's INR, which "considers it far more likely that the tubes are intended for another purpose;" the Defense Department which found the tubes "were perfectly usable for rockets;" British Intelligence which found the tubes would require "substantial re-engineering" to serve as centrifuges; and the IAEA which found "all evidence points to that this is for the rockets." Statements by the Vice President and Ms. Rice that they knew about Iraq's proposed use of the tubes for centrifuges with "absolute certainty" and that the tubes were "only really suited for nuclear weapons programs" are particularly questionable, since the dispute within the Administration has been described as a "holy war" and Administration sources have stated that Ms. Rice "was aware of the differences of opinion" and that her statements were "just a lie."

The evidence also shows that a September 8 lead article in *The New York Times* and a July 29, 2002 article in *The Washington Times* included classified information leaked by Administration officials. Among other things, *The New York Times* article quotes "anonymous" Administration officials as stating that "Iraq has stepped up its quest for nuclear weapons and has embarked on a worldwide hunt for materials to make an atomic bomb;" and *The Washington Times* article stated, "U.S. intelligence agencies believe the tubing is an essential component of Iraq's plans to enrich radioactive uranium to the point where it could be used to fashion a nuclear bomb."

Acquisition of Uranium from Niger

We have found that President Bush and members of his Administration made numerous knowingly and recklessly false statements that Iraq had sought to acquire enriched uranium from Niger. There is substantial evidence that these individuals have Conspired to Defraud the United States in violation of 18 U.S.C. § 371 and that President Bush's statements and certifications before and to Congress may constitute Making a False Statement to Congress in violation of 18 U.S.C. § 1001.

There is substantial evidence that members of the Bush Administration, including the Vice President, have cherry-picked and elevated intelligence information which supports this claim without adequate scrutiny, and have applied undue pressure to intelligence officials to reach these conclusions. Among other things, a former high level CIA official has stated that when CIA personnel were unable to verify these claims Cheney became dissatisfied and it "was the beginning of what turned out to be a year-long tug-of-war between the C.I.A and the Vice-President's office;" another senior official reported that CIA analysts got "pounded on, day after day" on these issues; and two former CIA officials explained that information on the charge was "passed directly to Washington without vetting them in the [U.S.] Embassy" in Rome.

The Bush Administration ignored numerous, contrary intelligence findings before making these false statements, including Ambassador Wilson's finding that "no one had signed such a document;" the CIA's warning to Ms. Rice's Deputy that the "President should not be a fact witness on this issue," and to Ms. Rice directly that "the evidence is weak;" the State Department's finding that the charges were "highly dubious;" and statements by French Intelligence authorities that the story "doesn't make any sense."

There is also evidence that the President's own statement in his State of the Union that "the British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa" may rise to the level of lying to Congress in violation of 18 U.S.C. § 1001. This is because, among other things, the CIA had told the President's staff before his October 7, 2002 speech that the "President should not be a fact witness on this [Niger-Uranium] issue;" the CIA "raised several concerns about the fragmentary nature of the intelligence" before the State of the Union; and after the speech his Administration informed the UN it "cannot confirm [the uranium] reports" (which the IAEA quickly found to be "not authentic").

Chemical and Biological Weapons

Our investigation has found that President Bush and members of his Administration have made numerous knowingly or recklessly false statements regarding Iraq's chemical and biological weapons capability. This includes false

statements regarding Iraq's possession of chemical weapons generally; a charge by an Iraqi defector that he had helped bury significant amounts of chemical and other weapons; the existence of mobile chemical weapons laboratories; and Iraq's ability to deliver such weapons using unmanned aerial vehicles. We have found substantial evidence that the knowingly and recklessly false statements by these individuals constitutes a Conspiracy to Defraud the United States in violation of 18 U.S.C. § 371, as well as evidence that the President's statements concerning mobile biological weapons may have constituted a False Statement to Congress in violation of 18 U.S.C. § 1001.

We have found substantial evidence that members of the Bush Administration made false statements regarding Iraq's chemical weapons capability generally, even though they were aware of contrary intelligence provide by the DIA, the CIA, and the State Department. Among other things, the September 2002 DIA report found "[t]here is no reliable information on whether Iraq is producing or stockpiling chemical weapons, or where Iraq has or will establish its chemical warfare agent production facilities;" as early as 1995 the CIA had been informed that "after the gulf war, Iraq destroyed all its chemical and biological weapons stock;" and the State Department's INR flagged many of Secretary Powell's statements regarding chemical weapons as being "weak."

There is also substantial evidence the Administration's September 2002 statement that an Iraqi defector, Adnan Ihsan Saeed al-Haeder, had secretly helped bury tons of biological and chemical weapons was also knowingly and recklessly made, as the CIA determined by December 2001 that "the intelligence officer concluded that al-Haideri had made up the entire story, apparently in the hopes of securing a visa."

Further, there is substantial evidence of the knowing and reckless nature of the Bush Administration's misstatements regarding mobile chemical weapons laboratories by virtue of the fact that they ignored numerous contrary information provided by the German and British Intelligence, as well as CIA officials. Among other things, German Intelligence informed the Administration "[t]his [Curveball] was not substantial evidence . . . [w]e made clear we could not verify the things he said;" British Intelligence officials informed the CIA they are "not convinced that Curveball is a wholly reliable source;" and shortly before Mr. Powell's speech, the CIA doctor who had met with Curveball noted that he "was deemed a fabricator," only to be told by his superior that "this war's going to happen regardless of what Curveball said or didn't say." Given the depth and credibility of these concerns, it is particularly difficult to defend the president's statement in his January 28, 2003 State of the Union Address that as a result of information provided by defectors "we know that Iraq, in the late 1990s, had several mobile biological weapons labs . . .designed to produce germ warfare agents and can be moved from place to a place to evade inspectors." As a result, this statement may constitute a False Statement to Congress.

Finally in this regard, there is also substantial evidence that Mr. Powell and President Bush also made knowingly or recklessly false claims regarding Iraq's unmanned aerial vehicles. Contrary to their assertions, the Air Force was found to "not agree that Iraq is developing UAVs primarily intended to be delivery platforms for chemical and biological (CBW) agents;" while the CIA "believed that the attempted purchase of the mapping software . . . may have been inadvertent."

Encouraging and Countenancing Torture and Cruel, Inhuman, and Degrading Treatment

Our investigation has found that there is substantial evidence that individuals within the Bush Administration have violated a number of domestic laws and international treaty obligations concerning the mistreatment of detainees in Iraq, including the Anti-Torture Statute, 18 U.S.C. § 2339; the War Crimes Act; 18 U.S.C. § 2441; the Geneva and Hague Conventions; the Convention Against Torture, Cruel, Inhuman, and Degrading Treatment; and the legal principle of command responsibility.

Department of Justice

There is substantial evidence that then Attorney General Ashcroft and current Attorney General Gonzales violated the Convention Against Torture, Cruel, Inhuman, and Degrading Treatment (which requires that member countries enact whatever framework is necessary to deter and punish all those who commit torture and other human rights violations) and the Geneva and Hague Convention (which obligates all signatory nations to investigation persons responsible for such violations). Among other things, the Department of Justice has only brought a single criminal charge against military contractors, military personnel, and CIA officials within its jurisdiction under the Military Extraterritorial Jurisdiction Act for mistreatment of detainees in Iraq.

There is also substantial evidence that then Attorney General Ashcroft and then White House Counsel Gonzales bear responsibility for documented, unlawful removal of detainees from Iraq in contravention of the War Crimes Act. Among other things, these individuals appear to have requested and approved a March 19, 2004 legal memorandum which, according to intelligence officials "was a green light" for the CIA to improperly remove detainees from Iraq.

There is further substantial evidence that then Attorney General Ashcroft bears responsibility for approving a legal memorandum defining torture as acts consisting of "extreme acts" inflicting "severe pain," such as that accompanying "death or organ failure," which such standard is inconsistent with the Anti-Torture Stature, 18 U.S.C. § 2339. Finally, there is further substantial evidence that Attorney General Gonzales bears responsibility for adopting a legal position that the ban on cruel, inhuman, and

degrading treatment (CID) does not apply to detainees held outside of the United States, in contravention of the Convention Against Torture, Cruel, Inhuman and Degrading Treatment. Among other things, the former Legal Adviser to the U.S. Department of State has concluded that the ban on CID "would apply outside the U.S."

Department of Defense and CIA

There is substantial evidence that Secretary Rumsfeld bears responsibility for torture and other illegal conduct in Iraq in violation of the Anti-Torture Statute. Among other things, Secretary Rumsfeld has approved a November 27, 2002 memorandum which includes the "use of scenarios designed to convince the detainee that death or severely painful consequences for him and/or his family are imminent;" and aided and abetted in causing these tactics to migrate to Iraq by virtue of, among other things, transferring General Geofrey D. Miller to Iraq to"Gitmoize" the detention operation.

There is also substantial evidence that Secretary Rumsfeld can be held criminally liable under the command responsibility doctrine. Among other things, Secretary Rumsfeld has been appraised of numerous incidents of torture and CID as well as "ghosting" of detainees, yet has initiated no major action to hold those who committed the acts responsible or effectuated policy changes designed to prevent such misconduct from reoccurring.

There is also substantial evidence that both Secretary Rumsfeld and then CIA Director Tenet have personally been aware of and approved the "ghosting" of at least one, and potentially further detainees, in violation of the Geneva and Hague Conventions. Specifically, with regard to the detaineee Hiwa Abdul Rahman Rashul, Secretary Rumsfeld admitted that Mr. Tenet asked him "not to immediately register the individual" (who was not registered for several additional months). There is also substantial evidence that Director Tenet was ultimately responsible for transferring Hiwa Abdul Rahman Rashal from Iraq in contravention of the Geneva and Hague Conventions and the War Crimes Act.

Finally, there is evidence that the U.S. Military used an incendiary weapon in combat known as White Phosphorus, even though the U.S. Battle Book states, "[i]t is against the Law of Land Warfare to employ WP against personnel targets," and which would be in contravention of the Geneva and Hague Conventions and the War Crimes Act.

Cover-ups and Retaliation

The Niger Forgeries and the "Sliming" of Ambassador Wilson and His Family

Our investigation has found there is substantial evidence that (i) the President has abrogated his obligation under Executive Order 12958 to take corrective action concerning acknowledged leaks of classified information within his Administration; (ii) these leaks appear to have been committed to, among other things, exact retribution against Ambassador Wilson for disclosing that the Bush Administration knew that the Niger documents were forgeries and that such conduct constitutes a Misuse of Government Funds in violation of 31 U.S.C. § 1301; and (iii) then Attorney General Ashcroft participated in a pending criminal investigation involving Karl Rove at a time when he had a personal and political relationship with Mr. Rove in violation of applicable conflict of interest requirements, namely 28 C.F.R. § 452, § 2-2.170 of the U.S. Attorneys Manual, and Sec. 1.7(b)(4) of the D.C. Rules of Professional Conduct. In addition, we have found that there have been a number of lies, misstatements, and delays by Members of the Bush Administration since the criminal investigation into the leak was commenced, however it is unclear whether these rise to the level of constituting a Conspiracy to Defraud the United States in contravention of 18 U.S.C. § 371.

There is substantial evidence as documented in the Libby Indictment and related media accounts that at least four administration officials (Mr. Libby, Mr. Rove, and two still as of yet unknown Administration officials) called at least five Washington journalists (Ms. Miller, Mr. Novak, Mr. Cooper, Mr. Pincus, and Mr. Woodward) and disclosed the identity and occupation of Wilson's wife as a CIA operative. These disclosures do not appear to have been inadvertent, rather they were, according to relevant reporters "given to me;" "unsolicited;" and obtained when the Administration official "veered" off topic. While it is still unclear whether these leaks violated specific criminal laws, there appears little doubt that leaks by Mr. Rove and Mr. Libby violated the requirements of their non-disclosure requirements, including Executive Order 12958 concerning the protection of national security secrets. This Order applies not only to negligent disclosure of classified information but also to persons simply "confirming" information to the media. Under the Executive Order, the President – about whom Robert Novak now claims he would "be amazed" if he did not know the leaker's identity – has an affirmative obligation to take "appropriate and prompt corrective action." (As *Newsweek* recently explained: "[a]ny reasonable reading of the events covered in the indictment would consider Rove's behavior "reckless [under the EO].")

There is also substantial evidence that the motivation for disclosure of Ms. Plame's name was to obtain retribution against Ambassador Wilson. Among other things, our investigation has shown that the White House strategy concerning Mr. Wilson was to "slime and defend;" Karl Rove reportedly admitted that Mr. Wilson's

wife "is fair game;" and a former Administration official acknowledged they "were trying to not only undermine and trash Ambassador Wilson, but to demonstrate their contempt for CIA by bringing Valerie's name into it." While Ms. Plame is not covered by the whistleblower or witness protection laws, there is substantial evidence that government resources were used to obtain and disseminate damaging information regarding Ambassador Wilson to the media in violation of the Misuse of Government Funds Statute, 31 U.S.C. § 1301.

There is also substantial evidence that then Attorney General Ashcroft violated applicable conflict of interest requirements, namely 28 C.F.R. § 452, Sec. 2-2.170 of the U.S. Attorneys Manual, and Sec. 1.7(b)(4) of the D.C. Rules of Professional Conduct. At the time that the Attorney General was being personally and privately briefed on FBI interviews with Karl Rove, it was also known that Mr. Rove had previously advised Mr. Aschcroft as a political candidate (earning almost $750,000 for his services) and Rove was considered by many to be responsible for Mr. Ashcroft being named as Attorney General. This conflict raises serious questions regarding the one-month delay between the time the CIA contacted the Department of Justice regarding possible criminal misconduct and the time the Department initiated a criminal investigation, the Department's subsequent delay in notifying the White House Counsel, and the White House Counsel's delay in asking White House staff to preserve relevant evidence. This may also explain why an FBI official admitted that the Department was "going a bit slower on this one because it is so high-profile."

We have also found substantial evidence that there have also been a number of additional misstatements by members of the Bush Administration concerning the leak, as well as numerous delays that they have caused. Among other things, White House Press Secretary Scott McClellan is responsible for at least eight misstatements concerning the involvement of Mr. Rove, Mr. Libby and other Administration officials in the leak, and there is evidence Karl Rove himself also falsely denied whether he leaked the name or had "any knowledge" of the leak. There is also evidence Vice President Cheney misspoke on national television in September 2003, when he denied knowledge of who sent Mr. Wilson to Niger, when the Libby Indictment reveals the Vice President had been briefed on that very matter "on or about June 12, 2003."

Other Instances of Bush Administration Retribution Against its Critics

We have also found substantial evidence that members of the Bush Administration have engaged in a pattern of seeking to exact retribution against a series of individuals, both inside and outside of the Administration, who have exposed wrongdoing or otherwise criticized their misconduct with regard to the Iraq War. There is substantial evidence that certain of these actions constitute a violation of the Whistleblowers Protection Act, 5 U.S.C. § 2302; while other actions may constitute Obstruction of Congress, 18 U.S.C. § 1505; the Lloyd-La Follette Act, 5 U.S.C. § 7211; Retaliating Against Witnesses, 18 U.S.C. § 1513; and Misuse of Government Funds, 31 U.S.C. § 1301.

There is evidence that the Army's actions in demoting Bunnatine Greenhouse as the Chief Contracting Officer of the Army Corps of Engineers was in retribution for her testimony before Congress that undue favoritism was shown toward Halliburton in awarding contracts in Iraq. Among other things, it has been charged that "they went after her to destroy her;" and reported that "[h]er crime was not obstructing justice but pursuing it by vehemently questioning irregularities in the awarding of some $7 billion worth of no-bid contracts in Iraq to the Halliburton subsidiary Kellogg Brown & Root."

There is also substantial evidence that members of the Bush Administration improperly harmed General Erik Shinseki by leaking the name of his replacement 14 months before his retirement, rendering him a lame duck and "embarrassing and neutralizing the Army's top officer." This appears to have been done in retaliation for his testimony before the Senate Armed Services Committee that the Defense Department's troop estimate was too low and "something on the order of several hundred thousand soldiers" would be needed. Among other things, an official acknowledged, "if you disagree with them in public, they'll come after you, the way they did with Shinseki;" while others have stated "Shinseki was publicly humiliated for suggesting it would take hundreds of thousands of troops to secure a post-Saddam Iraq."

There is also substantial evidence that members of the Bush Administration sought to exact political retribution against a number of other individuals who exposed their misconduct regarding Iraq. Among other things, when ABC reporter Jeffrey Koman reported on frustrated troops in Iraq, Matt Drudge reported that Mr. Koman was gay, explaining "someone from the White House communications shop" had given him the information; and when a CIA employee named "Jerry" found that Curveball was providing false information, he was transferred and "read the riot act."

Ongoing Lies, Deceptions, and Manipulation

Our investigation has found that the pattern of misstatements by individuals in the Bush Administration has continued well after the invasion of Iraq. It is unclear whether this pattern is sufficient to constitute a Conspiracy to Defraud the United States in violation of 18 U.S.C. § 371.

Among other things, President Bush and Vice President Cheney have made misstatements such as the President declaring on May 1, 2003 that "major combat operations in Iraq have ended" and the Vice President stating in June, 2005, that "they're in the last throes, if you will, of the insurgency." On October 4, 2005, President Bush stated that there were "30 Iraqi battalions in the lead;" when his own generals found that the number of combat ready Iraqi battalions had declined from 3 to 1. In May 2003, President Bush stated "we found the weapons of mass destruction; and Secretary Powell asserted "we have found the biological weapons vans;" when

those reports were not accurate, and only one of fifteen analysts supported this finding, which an ex-official described as an unprecedented "rush to judgment."

Impeachment Analysis

Our investigation has found that while the allegations set forth in this Report rise to the level of impeachable misconduct by the President, the Vice President, and other high ranking officials within the Administration, more information and investigatory authority is needed before recommendations can be made concerning specific Articles of Impeachment. This is due to the fact, that, among other things, the Bush Administration has largely ignored efforts by Members of Congress to obtain necessary information and documents, and the Republican Congress has failed to conduct oversight on these matters.

There is little doubt that the allegations of misconduct set forth in this Report – misleading Congress and the American public concerning the decision to go to war; misstating and manipulating the intelligence to justify a preemptive war; encouraging and countenancing torture and cruel, inhuman and degrading treatment; covering up wrongdoing and retaliating against administration critics – rise to the level of "Treason, Bribery, or other high Crimes and Misdemeanors" within the meaning of Article I, Section 2 of the Constitution.

We also found that there is at least a *prima facie* case that these actions by the President, Vice President and other members of the Bush Administration violate a number of federal laws, including (1) Committing a Fraud Against the United States (18 U.S.C. § 371); (2) Making False Statements to Congress (18 U.S.C. § 1001); (3) the War Powers Resolution (Public Law 93-148); (4) Misuse of Government Funds (31 U.S.C. § 1301); (5) federal laws and international treaties prohibiting torture and cruel, inhuman, and degrading treatment (including the Anti-Torture Statute, the War Crimes Act, the Geneva and Hague Conventions, the United Nations Convention Against Torture, and Cruel, Inhuman and Degrading Treatment); (6) federal laws concerning retaliating against witnesses and other individuals (including Obstructing Congress, the Whistleblower Protection Act, the Lloyd-LaFollette Act, and Retaliating against Witnesses); and (7) federal laws and regulations concerning leaking and other misuse of intelligence information (including Executive Order 12958, Gathering, Transmitting, or Losing Defense Information, and Gathering or Delivering Defense Information to Aid Foreign Government).

These charges appear to be more serious than the articles of impeachment approved by the House Judiciary Committee in 1974 against then President Nixon for, among other things, misusing the CIA and making false statements to the public to deceive them into believing a thorough investigation had been conducted regarding their wrongdoing. More generally, the type of offenses described herein – which is central to Congress' and the American people's ability to trust its Commander in Chief

regarding the use of military force – can certainly be considered to be offenses resulting "from the abuse or violation of some public trust," as explained by Alexander Hamilton in the *Federalist Papers*.

However, Members of the House and Senate have been essentially stymied by both the Bush Administration and the Republican Congress, from obtaining information concerning these matters. As David Broder wrote, "Majority Republicans see themselves first and foremost as members of the Bush team – and do not want to make trouble by asking hard questions." Among other things, the President has refused to respond to a letter from 122 Members of Congress, along with more than 500,000 Americans, asking him to explain whether the assertions set forth in the Downing Street Minutes were accurate; House Republican Chairmen of all relevant committees have refused to respond to a letter signed by 52 Members calling for hearings concerning the Downing Street Minutes; and the Administration has provided either no response or no meaningful response to questions submitted by Democratic Members concerning false statements regarding nuclear claims.

In addition, Senate and House Republican Chairs of the Intelligence Committees have refused, to this point, to conduct any meaningful investigation concerning intelligence manipulation; House Republican Chairmen have refused requests by Members to conduct meaningful hearings on torture and other abuses in Iraq; and the Administration has ignored a request for information concerning such abuses submitted by the Ranking Members of six committees. The President and Vice President have also ignored letters submitted by Members asking them to explain or act on the leaking of Valerie Plame's name to the press, in apparent retaliation against her husband; and Republican Chairmen have refused requests to hold hearings on the leaks. Republicans in the House have also rejected numerous attempts by Members to ask the Administration to provide information regarding all of these matters pursuant to Resolutions of Inquiry.

In this context, the House should create a bipartisan select committee vested with subpoena authority to investigate the Administration's abuses as discussed in this Report. The select committee – similar in nature to the "Ervin Committee" which investigated Watergate abuses – should complete its investigation within six months and, upon completion, report to the Judiciary Committee on any offenses it finds that may be subject to impeachment. Such a committee is needed because of the severity of the abuses of power and of public trust that may have occurred.

Censure Analysis

Our investigation has found that at a minimum, both the President and Vice President have failed to respond to requests for information concerning allegations that they and others in his Administration misled Congress and the American people regarding the decision to go to war in Iraq; misstated and

manipulated intelligence information regarding the justification for such war; countenanced torture and cruel, inhuman and degrading treatment in Iraq; and permitted inappropriate retaliation against critics of their Administration. Both the President and Vice President have also, at a minimum, failed to adequately account for specific misstatements they made regarding the War; and the President has failed to comply with Executive Order 12958.

This Report includes a voluminous public record indicating the President, the Vice President and others in their Administration have misled Congress and the American people regarding the decision to go to war in Iraq; misstated and manipulated intelligence information regarding the justification for such war; countenanced torture and cruel, inhuman and degrading treatment in Iraq; and permitted inappropriate retaliation against critics of their Administration. This Report further details that both the President and Vice President have largely ignored requests by Members of Congress to explain their actions regarding these matters. Among other things, the President has failed to respond to a letter signed by 122 Members of Congress on July 12, 2005 asking him whether the assertions set forth in the Downing Street Minutes are accurate; and the Vice President has failed to respond to a letter from several Members of Congress dated, November 3, 2005 asking him to explain his involvement in the disclosure of Valerie Plame's identity as a CIA operative.

In addition, President Bush has failed to adequately account for or explain to Congress several specific misstatements he made in preparation for war with Iraq. Among other things:

- The President has failed to adequately account to Congress or explain his statement in his October 7, 2002 speech in Cincinnati that "[w]e've learned that Iraq has trained al Qaeda members in bomb-making and poisons and deadly gases;" notwithstanding the fact that a declassified Defense Intelligence Agency document from February 2002 found that the source for the information, Ibn al-Shaykh al-Libi, "was intentionally misleading the debriefers" in making claims about Iraqi support for al Qaeda's work with illicit weapons.

- The President has failed to adequately account to Congress or explain his statement in his 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;" notwithstanding the fact that the CIA had told the President's staff before his October 7, 2002 speech that the "President should not be a fact witness on this [Niger-Uranium] issue;" and before the State of the Union Address, the CIA again "raised several concerns about the fragmentary nature of the intelligence."

- The President has failed to adequately account to Congress or explain his statement in his January 28, 2003 State of the Union Address that as a result of information provided by three Iraqi defectors, "we know that Iraq, in the late 1990s, had several mobile biological weapons labs . . . designed to produce germ warfare agents and can be moved from place to place to evade inspectors," which such statement has not been withdrawn to this day; notwithstanding the fact that numerous U.S. and foreign intelligence officials had previously discredited the information.

Moreover, President Bush has failed to comply with his obligations under Executive Order 12958 concerning the protection of national security secrets; notwithstanding the fact that it is uncontroverted that several officials within his Administration disseminated classified information to the media concerning Valerie Plame's employment at the CIA, and the Executive Order applies not only to negligent disclosure of classified information, but also to persons simply "confirming" information to the media.

Vice President Cheney has failed to adequately account for or explain to Congress several specific misstatements he made in preparation for war with Iraq. Among other things:

- The Vice President has failed to account for his statement on December 9, 2001 that the report that Mohammed Atta met with the Iraq intelligence authorities in Prague in April 2001 had "been pretty well confirmed," which such statement has not been withdrawn to this day; notwithstanding the fact that the Vice President eventually learned that the FBI and CIA both concluded that the meeting did not take place.

- The Vice President has failed to adequately account for his statement on August 26, 2002 that we have learned that Iraq has resumed efforts to acquire nuclear weapons "from first hand testimony from defectors, including Saddam's own son-in-law;" notwithstanding the fact that the individual, Hussein Kamel al-Majid, had been killed in 1996, and U.S. officials had previously been briefed to the effect that Kamel had not provided such first hand testimony.

- The Vice President has failed to account for his statement on September 8, 2002 that we know "with absolute certainty, that [Saddam Hussein] is using his procurement system to acquire the equipment he needs in order to enrich uranium to build a nuclear weapon;" notwithstanding the fact that reports and information provided by the Energy Department, the State Department, the Defense Department and other credible intelligence sources directly contradicted his statements.