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S. HRG. 108–678

EFFORTS TO DETERMINE THE STATUS OF IRAQI WEAPONS OF MASS DESTRUCTION AND RELATED PROGRAMS

HEARING

BEFORE THE

COMMITTEE ON ARMED SERVICES UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

JANUARY 28, 2004

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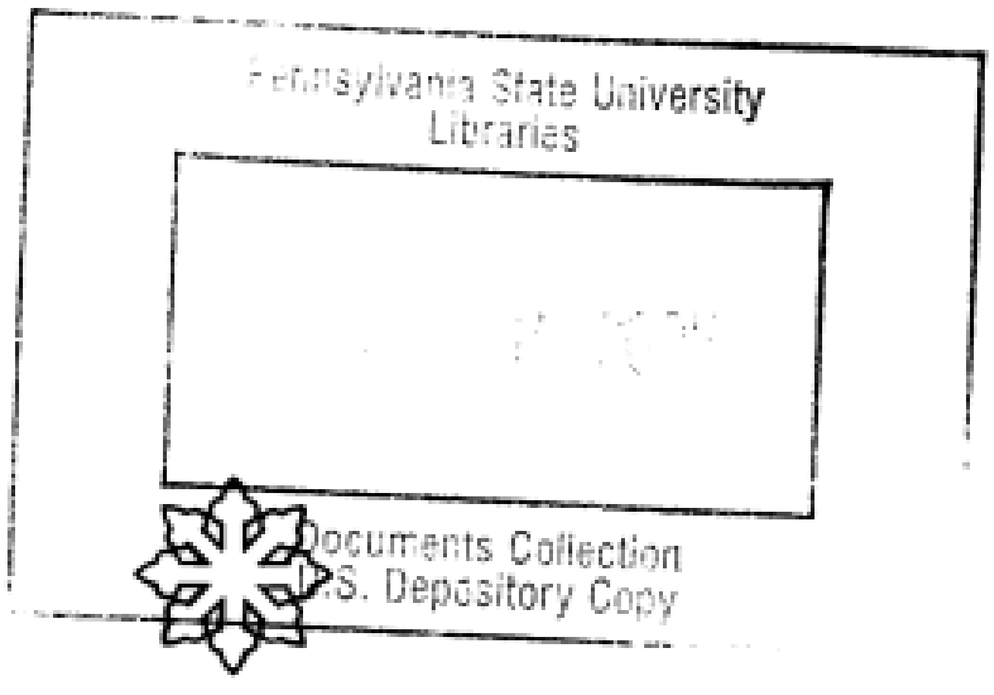

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EFFORTS TO DETERMINE THE STATUS OF IRAQI WEAPONS OF MASS DESTRUCTION AND RELATED PROGRAMS

WEDNESDAY, JANUARY 28, 2004

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 11:05 a.m., in room SD–106, Dirksen Senate Office Building, Senator John Warner (chairman) presiding.

Committee members present: Senators Warner, McCain, Inhofe, Roberts, Allard, Sessions, Collins, Ensign, Dole, Cornyn, Levin, Kennedy, Byrd, Reed, Akaka, Bill Nelson, E. Benjamin Nelson, Dayton, Bayh, Clinton, and Pryor.

Committee staff members present: Judith A. Ansley, staff director; and Gabriella Eisen, nominations clerk.

Majority staff members present: Charles W. Alsup, professional staff member; L. David Cherington, counsel; Regina A. Dubey, research assistant; Gregory T. Kiley, professional staff member; Thomas L. MacKenzie, professional staff member; Lucian L. Niemeyer, professional staff member; Lynn F. Rusten, professional staff member; Scott W. Stucky, general counsel; and Richard F. Walsh, counsel.

Minority staff members present: Richard D. DeBobes, Democratic staff director; Evelyn N. Farkas, professional staff member; Richard W. Fieldhouse, professional staff member; Maren R. Leed, professional staff member; Gerald J. Leeling, minority counsel; Peter K. Levine, minority counsel; and William G.P. Monahan, minority counsel.

Staff assistants present: Michael N. Berger, Leah C. Brewer, Andrew W. Florell, and Nicholas W. West.

Committee members' assistants present: John A. Bonsell, assistant to Senator Inhofe; James Beauchamp, assistant to Senator Roberts; Jayson Roehl, assistant to Senator Allard; Arch Galloway II, assistant to Senator Sessions; Derek J. Maurer, assistant to Senator Collins; D'Arcy Grisier, assistant to Senator Ensign; Lindsey R. Neas, assistant to Senator Talent; Clyde A. Taylor IV, assistant to Senator Chambliss; Christine O. Hill, assistant to Senator Dole; Russell J. Thomasson, assistant to Senator Cornyn; Mieke Y. Eoyang, assistant to Senator Kennedy; Christina Evans and Terrence E. Sauvain, assistants to Senator Byrd; Elizabeth King, assistant to Senator Reed; Caroline Tess, assistant to Senator Bill Nelson; Eric Pierce, assistant to Senator E. Benjamin Nel-

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son; Todd Rosenblum, assistant to Senator Bayh; Andrew Shapiro, assistant to Senator Clinton; and Terri Glaze, assistant to Senator Pryor.

OPENING STATEMENT OF SENATOR JOHN WARNER, CHAIRMAN

Chairman WARNER. The committee meets today to review a further report, and I stress a further report, from Dr. David Kay on his efforts and the efforts of the team which he was privileged to work with, known as the Iraq Survey Group (ISG). He served as the special advisor to the Director of Central Intelligence (DCI) in determining the status of weapons of mass destruction (WMD) and related programs in Iraq.

After assuming this position last July, Dr. Kay made his initial interim official report to this committee on October 3. As members of the committee are aware, Dr. Kay has stepped down from this position and has been succeeded by Charles A. Duelfer, a former colleague and member of the U.N. Special Commission with Dr. Kay, who has been appointed by Director Tenet to continue this important mission. I met with Mr. Duelfer the day before yesterday and we just momentarily met with him in the Intelligence Committee room.

Dr. Kay volunteered, and I emphasize that, volunteered to resume his public service, worked diligently for 6 months in Iraq under difficult and often dangerous conditions, and just concluded his work last week and reported to the DCI. I thank you and I thank your wife for your public service.

Working with General Dayton and the ISG, your mission was to search for all facts, I repeat all facts, relevant to the many issues about Iraqi weapons of mass destruction and related programs. You initiated what was and continues, I emphasize continues, to be a very difficult, complex mission, that in your own words is yet to be completed.

As you cautioned us when you took up this post in July, patience is required to ensure we complete a thorough assessment of this important issue. In this hearing today, we hope to receive your assessment of what has been accomplished to date, I repeat to date, and what, in your professional judgment remains to be done by the ISG. It is far too early to reach any final judgments or conclusions.

In recent days, I mentioned I met with General Dayton, I met extensively with Dr. Kay over the recess period, and Mr. Duelfer, and have received the assurances of General Dayton and Mr. Duelfer that they will be prepared to present to Congress a second official interim report of the ISG in the timeframe of late March.

It is crucial that the important work of the ISG go on. Thus far, the findings have been significant. Dr. Kay has stated that although we've not found evidence of large stockpiles of WMD or forward-deployed weapons, the ISG has made the following evidence as a part of their record that will be forthcoming: first, evidence of Saddam Hussein's intent to pursue WMD programs on a large scale; actual, ongoing chemical and biological research programs; an active program to use the deadly chemical ricin as a weapon, a program that was interrupted only by the start of the war in March; evidence of long-range missile programs that, in all prob-

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ability, were ultimately going to be used to deliver WMD; evidence that Saddam Hussein was attempting to reconstitute his fledgling nuclear program as late as 2001; and most important, evidence that clearly indicates Saddam Hussein was conducting a wide range of activities in clear contravention of the United Nations' resolutions.

As you recently stated, Dr. Kay, and I quote you, "It was reasonable to conclude that Iraq posed an imminent threat. What we learned during the inspection made Iraq a more dangerous place potentially than in fact we thought it was even before the war." Further, you said on NBC's Today show on Tuesday that it was "absolutely prudent for the U.S. to go to war."

Dr. Kay, I concur in those conclusions. I believe a real and growing threat has been eliminated and a coalition of nations acted prudently in the cause of freedom. I'd be interested if you concur in my conclusions.

While some have asserted that the President and his senior advisors may have exaggerated or manipulated pre-war intelligence on Iraq's WMD programs, Dr. Kay reached the following conclusion, which I think is different. As you stated recently, "We have to remember that this view of Iraq (pre-war assessment of WMD capabilities) was held during the Clinton administration and did not change in the Bush administration. It is not a political got-you issue. Often, estimates are different than reality. The important thing is, when they differ, to understand why."

That's precisely why I called this meeting, Dr. Kay, to continue the work of this committee in developing a body of fact from which reasonable people at the conclusion of that collection of facts can reach their own objective thoughts and conclusions. It's been a difficult process, but the ISG work is not completed.

Now, you have stated that you believe there did not exist large stockpiles of biological and chemical weapons, but I hope that you will, in your testimony, indicate that since the work is not completed, since Iraq is as big as California and Baghdad approximates the sprawling territory of Los Angeles, that we could find caches and reserves of weapons of mass destruction, chemical or biological, or even further evidence about the nuclear program.

We also would hope that you'd address the question of whether or not Saddam Hussein had some kind of "breakout" capability for quickly producing chemical or biological weapons, and was this not a basis for constituting a conclusion that there was an imminent threat from Saddam Hussein and his military.

Why were the Iraqi WMD records systematically looted or destroyed, and why do scientists in custody today continue not to be forthcoming, if there was nothing to hide or nothing substantial existed?

The work of the ISG has shown that Saddam Hussein had WMD intentions, had WMD programs that did survive, and did outwit for 12 years the United Nations Security Council and the resolutions, indeed, the inspections in large measure. If ultimately the findings of the ISG do differ from the pre-war assessments of our Intelligence Community, differ from assessments of the United Nations, differ from assessments of intelligence services of many other nations, indeed, that is cause for concern. But we are not there yet

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in terms of the totality of fact on which to draw such serious conclusions.

Today and tomorrow our policymakers must be able to rely on the intelligence they are provided. The safety and security of the men and women of the Armed Forces are dependent on intelligence, and indeed, the security of our Nation. So collectively all of us, Congress, the executive branch, and other nations, we must vigorously continue to pursue the collection of the facts as the ISG is doing, and upon that completion, then draw our conclusions and take such corrective measures as may be necessary.

As we speak, over 1,400 individuals, military and civilian, are on the ground in Iraq seeking the facts about Iraq's WMD programs. I have confidence in the commitment and the ability of General Dayton, Mr. Duelfer, your successor, and representatives from our coalition partners to complete this mission. They have some of the best and brightest of our military and our Intelligence Community to complete this task, and Congress has provided the necessary means, a very substantial appropriation of recent. We remain committed to providing the resources that are necessary for the completion of the ISG work.

Dr. Kay, I thank you for your public service once again.

Senator Levin.

STATEMENT OF SENATOR CARL LEVIN

Senator LEVIN. Thank you, Mr. Chairman, and let me join you in welcoming Dr. Kay to the hearing and stating our thanks for his work on the Iraq Survey Group.

Dr. Kay's recent reported statements—for example, that the Intelligence Community was wrong about there being stockpiles of weapons of mass destruction in Iraq before the war; that it is the Intelligence Community's consensus that the two alleged "biological" trailers were for hydrogen production, not for producing biological warfare agents; and that Iraq had not reconstituted its nuclear weapons program—stand in sharp contrast to the statements made by the administration before going to war in Iraq. Dr. Kay's recent statements raise serious questions about the accuracy and objectivity of our intelligence and about the administration's public statements before the war that were supposedly based on that intelligence.

Before the war, the administration, in order to support its decision to go to war, made numerous vivid, unqualified statements about Iraq having in its possession weapons of mass destruction—not "programs," not "program-related activities," and not "intentions." Actual weapons is what the administration's statements focused on.

For example, on August 26, 2002, Vice President Cheney gave a major speech about a threat from Iraq's weapons of mass destruction.

He asserted the following: "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."

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Vice President Cheney was not talking about programs or intentions; he was specifically referring to existing weapons that were being amassed for use against us.

Here is what Secretary of Defense Rumsfeld said in his testimony to this committee on September 19, 2002: "Saddam Hussein's amassed large, clandestine stockpiles of biological weapons, including anthrax, botulism toxin, possibly smallpox. He's amassed large, clandestine stockpiles of chemical weapons, including VX, sarin, and mustard gas.

Notice again, not programs or intentions, it's stockpiles that Saddam Hussein was said to have amassed.

On September 27, President Bush said that we must make sure that Saddam Hussein, "never has the capacity to use the stockpiles of anthrax that we know he has, or VX, the biological weapons which he possesses." Notice again, not reference to programs or intentions. The representation is stockpiles and weapons in the possession of Saddam Hussein.

On October 7, 2002, President Bush said that, "It [Iraq] possesses and produces chemical and biological weapons." Possesses and produces, not programs or intentions.

On February 5, 2003, Secretary of State Colin Powell spoke at the U.N. He said, "We know from sources that a missile brigade outside Baghdad was dispersing rocket launchers and warheads containing biological warfare agent to various locations. Most of the launchers and warheads had been hidden in large groves of palm trees—and were to be moved every 1 to 4 weeks to escape detection. There can be no doubt," Secretary Powell said, "no doubt that Saddam Hussein has biological weapons . . . and he has the ability to dispense these lethal poisons and diseases in ways that can cause massive death and destruction."

Secretary Powell talked about "the existence of mobile production facilities used to make biological agents." He said that, "We know what the tanks, pumps, compressors, and other parts look like. We know how they fit together. We know how they work. We know a great deal about the platforms on which they are mounted. We know that Iraq has at least seven of these mobile biological agent production factories."

Then he said, "Our conservative estimate is that Iraq today has a stockpile of between 100 and 500 tons of chemical weapons agent. That is enough to fill 16,000 battlefield rockets." He followed on by saying, "Saddam Hussein has chemical weapons. . . We have sources who tell us that he recently has authorized his field commanders to use them." Secretary Powell, in other words, spoke of actual weapons, not about "program-related activities" or "intentions."

On March 11, 2003, just before the start of the war, Secretary of Defense Rumsfeld said the following: "We know he continues to hide biological and chemical weapons, moving them to different locations as often as every 12 to 24 hours and placing them in residential neighborhoods."

About 2 weeks later, Secretary Rumsfeld said, "We know where they [weapons of mass destruction] are."

Just in case there was ever any doubt about the reason given for why we went to war, the President's Press Secretary restated the

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point this way on April 10, 2003: "Make no mistake . . . we have high confidence that they have weapons of mass destruction. That is what this war was about and it is about. We have high confidence it will be found."

Incredibly enough, administration leaders are still saying that we found weapons of mass destruction production facilities. Just last week, Vice President Cheney said that the two trailers found in Iraq were part of a mobile biological weapons lab program and were, in his words, "conclusive evidence that he did in fact have programs for weapons of mass destruction."

But today's witness, Dr. David Kay, is reported in the New York Times as saying that the consensus in the Intelligence Community is that those two trailers were for producing hydrogen for weather balloons or possibly rocket fuel—but not for biological weapons.

Surely we should find out what is the basis for Vice President Cheney's recent statement, as well as the basis for the unqualified administration statements made before the war which I have just quoted.

Unfortunately, as of now, the leadership of the Senate will not allow an inquiry into how the administration characterized the intelligence about Iraq's weapons of mass destruction. The Intelligence Committee's inquiry is limited to the question of the production of intelligence. That committee is not looking into how that intelligence was used and characterized by policymakers.

We will continue to press for an inquiry looking to get the whole story, the full picture. If the only way to obtain that is to have an outside, independent, nonpartisan commission to conduct a comprehensive and objective review of the entire matter, so be it.

Whether one agreed or disagreed with the decision to proceed to war, and whether one agreed or disagreed with the decision to proceed without the support of the international community acting through the U.N., the case made by the administration for initiating the war against Iraq was not because Iraq had intentions to someday resume production of weapons of mass destruction. It was because they had in their possession weapons of mass destruction.

Although the issue of Iraq's weapons of mass destruction intentions or ambitions and program-related activities is a serious issue, it is not why we went to war. The case for war was Iraq's possession, production, deployment, and stockpiling of weapons of mass destruction. A different case for war against Iraq can be made, but the case which the administration made to the American people was the presence of actual weapons of mass destruction.

When lives are at stake and our military is going to be placed in harm's way, in other words, when we decide to go to war, it is totally unacceptable to have intelligence that is this far off or to exaggerate or shape the intelligence for any purpose by anybody. Thank you, Mr. Chairman.

Chairman WARNER. Dr. Kay, we'll now receive from you any preliminary comments you wish to make.

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STATEMENT OF DR. DAVID KAY, FORMER SPECIAL ADVISOR TO THE DIRECTOR OF CENTRAL INTELLIGENCE ON STRATEGY REGARDING IRAQI WEAPONS OF MASS DESTRUCTION PROGRAMS

Dr. KAY. Thank you very much, Mr. Chairman. As we discussed, I do not have a written statement. This hearing came about very quickly. I do have a few preliminary comments, but I suspect you're more interested in asking questions. I'll be happy to respond to those questions to the best of my ability.

I would like to open by saying that the talent, dedication, and bravery of the staff of the ISG that was my privilege to direct is unparalleled and the country owes a great debt of gratitude to the men and women who have served over there and continue to serve doing that.

A great deal has been accomplished by the team and I do think, I echo what you said, Senator, I think it important that it goes on and that it is allowed to reach its full conclusion. In fact, I really believe it ought to be better resourced and totally focused on WMD, that that is important to do it.

But I also believe that it is time to begin the fundamental analysis of how we got here, what led us here, and what we need to do in order to ensure that we are equipped with the best possible intelligence as we face these issues in the future.

Let me begin by saying we were almost all wrong, and I certainly include myself here: Senator Kennedy knows very directly. Senator Kennedy and I talked on several occasions prior to the war that my view was that the best evidence that I had seen was that Iraq indeed had weapons of mass destruction. I would also point out that many governments that chose not to support this war, certainly the French, President Chirac, as I recall, in April of last year referred to Iraq's possession of WMD. The Germans, certainly the intelligence service, believed that there were WMD.

It turns out we were all wrong probably in my judgment and that is most disturbing. We're also in a period in which we've had intelligence surprises in the proliferation area that go the other way. The case of Iran, a nuclear program that the Iranians had was 18 years old, that we underestimated, and that in fact we didn't discover. It was discovered by a group of Iranian dissidents outside the country who pointed their national community to the location. The Libyan program recently discovered was far more extensive than was assessed prior to that.

There's a long record here of being wrong. There's a good reason for it, there are probably multiple reasons. Certainly proliferation is a hard thing to track, particularly in countries that deny easy and free access and don't have free and open societies.

In my judgment, based on the work that has been done to this point by the ISG, in fact that I reported to you in October, Iraq was in clear violation of the terms of Resolution 1441. Resolution 1441 required that Iraq report all of its activities, one last chance to come clean about what it had. We have discovered hundreds of cases based on both documents, physical evidence, and the testimony of Iraqis of activities that were prohibited under the initial U.N. Resolution 687 and that should have been reported under Resolution 1441 with Iraqi testimony that not only did they not tell

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the U.N. about this, they were instructed not to do it and they hid material.

I think the aim, and certainly the aim of what I've tried to do since leaving, is not political and certainly not a witch hunt at individuals. It's to try to direct our attention at what I believe is a fundamental fault analysis that we must now examine.

Let me take one of the explanations most commonly given: Analysts were pressured to reach conclusions that would fit the political agenda of one or another administration. I deeply think that is a wrong explanation. As a leader of the effort of the ISG, I spent most of my days not out in the field leading inspections, it's typically what you do at that level. I was trying to motivate, direct, find strategies.

In the course of doing that, I had innumerable analysts who came to me in apology that the world that we were finding was not the world that they had thought existed and that they had estimated. Reality on the ground differed in advance and never, not in a single case, was the explanation, I was pressured to do this. The explanation was very often, the limited data we had led one to reasonably conclude this, I now see that there's another explanation for it.

Each case was different but the conversations were sufficiently in depth and our relationship was sufficiently frank that I am convinced that at least of the analysts I dealt with, I did not come across a single one that felt it had been, in the military term, inappropriate command influence that led them to take that position. It was not that. It was the honest difficulty based on the information that had been collected and led the analyst to that conclusion.

Almost in a perverse way, I wish it had been undue influence, because we know how to correct that. We get rid of the people who in fact were exercising that. The fact that it wasn't tells me that we have a much more fundamental problem of understanding what went wrong and we have to figure out what was there. That's what I call fundamental fault analysis.

Like I say, I think we have other cases other than Iraq. I do not think the problem of global proliferation of weapons technology of mass destruction is going to go away and that's why I think it is an urgent issue.

Let me wrap up here with just a brief summary of what I think we are now facing in Iraq. I regret to say that I think at the end of the work of the ISG there is still going to be an unresolvable ambiguity about what happened. A lot of that traces to the failure on April 9 to establish immediately physical security in Iraq, the unparalleled looting and destruction, a lot of which was directly intentional, designed by the security services to cover the tracks of the Iraq WMD program and their other programs as well, a lot of which was what we simply called "Ali Baba" looting. "It had been the regime, the regime is gone, I'm going to go take the gold toilet fixtures and everything else imaginable." I've seen looting around the world and thought I knew the best looters in the world. The Iraqis excel at that.

The result is—and document destruction—we're really not going to be able to prove beyond a truth the negatives and some of the positive conclusions that we're going to come to. There will be al-

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ways unresolved ambiguity here. But I do think the ISG, I think Charlie Duelfer is a great leader, I have utmost confidence in Charles, I think you will get as full an answer as you can possibly get.

Let me just conclude by my own personal tribute, both to the President and to George Tenet for having the courage to select me to do this and my successor, Charlie Duelfer, as well. Both of us are known for what is, at times, a regrettable strength—a streak of independence. I came not from within the administration and it was clear and clear in our discussions and no one asked otherwise, that I would lead this the way I thought best and I would speak the truth as we found it. I had absolutely no pressure prior, during the course of the work at the ISG, or after I left to do anything otherwise. I think that shows a level of maturity and understanding that I think bodes well for getting to the bottom of this.

But it is really up to you and your staff on behalf of the American people to take on that challenge. It's not something that anyone from the outside can do, so I look forward to these hearings and other hearings and how you will get to the conclusions.

I do believe we have to understand why reality turned out to be different than expectations and estimate. But you have more public service, certainly many of you than I have ever had and you recognize that this is not unusual. I told Senator Warner earlier that I've been drawn back as a result of a recent film of reminding me of something. At the time of the Cuban missile crisis, the combined estimate—there was unanimity in the intelligence service—was that there were no Soviet warheads in Cuba at the time of the missile crisis. Fortunately, President Kennedy and Robert Kennedy disagreed with the estimate and chose a course of action less ambitious and aggressive than recommended by their advisors.

But the most important thing about that story, which is not often told, is that as a result after the Cuban missile crisis, immediate steps were taken to correct our inability to collect intelligence on the movement of nuclear material out of the Soviet Union to other places, so that by the end of the Johnson administration, the Intelligence Community had a capability to do what it had not been able to do at the time of the Cuban missile crisis.

I think you face a similar responsibility in ensuring that the community is able to do a better job in the future than it has done in the past.

Senator, I'm happy to answer your questions.

Chairman WARNER. Thank you very much. Colleagues, we'll go to a round of 6 minutes. In the event there's a vote, it's my intention to continue the hearing on a rotation basis as members come and go so we have continuity.

Doctor, I assure you that Congress, this committee, the Intelligence Committee under Senator Roberts, Senator Rockefeller, that Senator Levin and I will pursue this, but we'll wait until such time as the work of the Intelligence Committee—we both serve on that committee—is completed, we've had a chance to analyze it, and then we'll sit down to determine what the next step may be.

But bottom line, and you have emphasized it, and that is that we have to make such corrections as we deem necessary to the intelligence system, for the security of this country, for the safety of

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the men and women in uniform who today and tonight and tomorrow and for the definite future will be out there taking risks in the cause of freedom. So I assure you it will be done.

Now, I want to pick up on your comment that we were all wrong. Let's stop to think about that. We agreed, you and I, we've had extensive discussions, that the work of the ISG has to continue, correct?

Dr. KAY. Absolutely.

Chairman WARNER. That given the size of Iraq, California, the size of Baghdad, Los Angeles, we could discover some facts that would confirm the conclusions that were reached by the Intelligence Community, not only in this country but other nations in the future. Am I not correct in that assumption?

Dr. KAY. I certainly think that's a theoretical possibility, yes, Senator Warner.

Chairman WARNER. So maybe we better not pronounce we're all wrong yet, because I think until we have finished the work, the ISG and the other nations that are working for the ISG, I think we better hold such conclusion in abeyance. That would be my thought.

Dr. KAY. Senator Warner, may I only add, it would be totally out of character for me to be against continued investigation in almost any area, that's my life. I believe that the effort that has been directed to this point has been sufficiently intense that it is highly unlikely that there were large stockpiles of deployed, militarized chemical and biological weapons there. Is it theoretically possible in a country as vast as that that they've hidden? It's theoretically possible, but we went after this not in the way of trying to find where the weapons are hidden. When you don't find them in the obvious places, you look to see were they produced, were there people that produced them, were there the inputs to the production process?

You do that and you eliminate, and that's what I mean by unresolved ambiguity. When the ISG wraps up its work, whether it be 6 months or 6 years from now, there are still going to be people who say, you didn't look everywhere, isn't it possible it was hidden someplace? The answer has to be honestly, yes, it's possible, but you try to eliminate that by this other process, and when I reached the conclusion, which I admit is partial and is purely mine that I think there were no large stockpiles of WMD, it's based on that process. But I agree, we're not in disagreement at all. The search must continue.

Chairman WARNER. Right. But the operative word in your assumption is large. Several small caches could constitute an imminent threat. Am I not correct in that?

Dr. KAY. That's always possible and I doubt that we will ever—I mean, it's possible—they could be there and we could never find them.

Chairman WARNER. All right. But let's give this process a chance to continue.

Dr. KAY. Absolutely.

Chairman WARNER. We agree that there could be the discovery in some future date of the evidence which confirms, perhaps not in

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totality, but in part, the conclusions of the international intelligence community, so we leave open that option.

But let's go back to your other statement that you feel that perhaps as much as 85 percent of the work of the ISG has been completed. Am I correct in that?

Dr. KAY. I've said I think 85 percent of the major elements of the Iraqi program are probably known. That's not 85 percent of the total volume.

Chairman WARNER. But in our discussions you've emphasized that 15 percent yet to be done could yield productive evidence that's just as important to what you've accumulated or not accumulated to date.

Dr. KAY. Senator Warner, that's certainly true, particularly with regard to the foreign countries and individuals that assisted that program, which remain a continuing threat in other countries unless we know fully who they were and what they contributed.

Chairman WARNER. Clearly that at the outbreak of the war or prior thereto and during the war, an awful lot of destruction of documents took place and perhaps other tangible evidence. Today the persons who were most likely involved in weapons programs, most likely to have the knowledge, are refusing to talk. Does that not lend itself to an assumption that there had to be something there, otherwise they wouldn't have gone about, so methodically destroying all the records and refusing to talk?

Dr. KAY. You're absolutely—I think, and I think I've said, but let me be absolutely clear about it, Iraq was in clear and material violation of Resolution 1441. They maintained programs and activities and certainly they had the intentions at a point to resume their programs, so there was a lot they wanted to hide because it showed what they were doing that was illegal. I hope we find even more evidence of that.

Chairman WARNER. Part of that program was missiles clearly, clearly in defiance of the U.N. resolution in terms of range. They had the potential to incorporate in those warheads, although small quantities, nevertheless very lethal types of WMD. Am I not correct in that?

Dr. KAY. You're absolutely correct.

Chairman WARNER. Could you say that the work thus far of the ISG, and I recounted a number of things including the ricin and so forth in my opening statement, does not that lend itself to the understanding, the conclusion that Saddam Hussein and this military machine under his control posed an imminent threat, perhaps to the neighbors, perhaps to those beyond the perimeter of the neighbors?

Dr. KAY. Senator Warner, I think the world is far safer with the disappearance and the removal of Saddam Hussein. I have said I actually think this may be one of those cases where it was even more dangerous than we thought. I think when we have the complete record, you're going to discover that after 1998 it became a regime that was totally corrupt, individuals were out for their own protection, and in a world where we know others are seeking WMD, the likelihood at some point in the future of a seller and a buyer meeting up would have made that a far more dangerous

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country than even we anticipated with what may turn out not to be a fully accurate estimate.

Chairman WARNER. Thank you, Dr. Kay.

Senator Levin.

Senator LEVIN. Dr. Kay, on the question of stockpiles, you have stated, I believe, that in your opinion, Iraq did not have large stockpiles of chemical and biological weapons in 2002. Is that correct?

Dr. KAY. That's correct, Senator.

Senator LEVIN. Do you have any evidence that they had any stockpiles, large or small, in 2002?

Dr. KAY. I simply have no evidence, Senator.

Senator LEVIN. You've not uncovered any evidence of small stockpiles?

Dr. KAY. We have not uncovered any small stockpiles, that's correct.

Senator LEVIN. Have you uncovered any evidence that they had small stockpiles in 2002?

Dr. KAY. We have evidence that they certainly could have produced small amounts, but we've not discovered evidence of the stockpiles.

Senator LEVIN. On the question of the vans, according to the New York Times on January 26, you indicated that there's a consensus in the Intelligence Community that the trailers that we found were intended to produce hydrogen for weather balloons or possibly rocket fuel, but not for producing biological warfare agents. Was that an accurate report of your position?

Dr. KAY. That's probably not my exact words, but roughly accurate. I think 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.

Senator LEVIN. Now, on January 22, just a week ago, Vice President Cheney said that we know, for example, that prior to our going in, he had spent time and effort acquiring mobile biological weapons labs and were quite confident he did, in fact, have such a program. We found a couple of semi-trailers at this point which we believe were in fact part of that program and I would deem that "conclusive evidence, if you will, that he did, in fact, have programs for weapons of mass destruction."

Now, those vans, according to the Vice President, 1 week ago are conclusive evidence that he had weapons, and yet you're saying that the consensus in the Intelligence Community is that those vans were for some non-weapons-related purpose, they were either for weather balloons, hydrogen, or rocket fuel, but not for weapons of mass destruction.

Do you know what intelligence Vice President Cheney is relying on when he tells the public a week ago, not before the war, everyone would—they were all wrong before the war—but now, a week ago still staying that those vans are conclusive evidence that there was a biological weapons program. My question: Do you know what intelligence Vice President Cheney was relying on 1 week ago when he made that statement to the American public?

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Dr. KAY. Senator Levin, if you want the short answer, and the obvious answer, as you probably know, is, am I aware of what the Vice President was reading a week ago, I'm not.

Senator LEVIN. Have you seen intelligence which would support that conclusion?

Dr. KAY. Yes, I have. In fact, if you had asked me, as I think in fact you did, or members of Senator Roberts' Select Intelligence Committee certainly did in July and August, this has been a source of real struggle with regard to those vans. There was a point during the process when I would have said the consensus opinion is that they were for biological weapons. It's been an ongoing struggle to understand those two vans and it's been a shifting target in that regard.

Senator LEVIN. Now I understand that shifting target thing. I'm talking about right now. You've said that the consensus in the Intelligence Community is that those vans are not related. Is that a correct statement which you just gave here this morning? Is that the consensus opinion in the Intelligence Community now?

Dr. KAY. It is my view of the consensus opinion, but there are, no doubt given the nature of opinions, people out there who hold a different opinion.

Senator LEVIN. All right. But in your judgment, the consensus in the Intelligence Community now is that those are not biological weapons vans?

Dr. KAY. That is my personal judgment. Others may well hold a different one.

Senator LEVIN. All right. I think it's critically important that we find out the basis of the Vice President's statement. I'm saying this to our chairman, not to you, that we find out the basis of the Vice President's statement, because this is where intelligence becomes so important. If there's intelligence out there that still supports the conclusion with certainty, he deems this conclusive evidence that he had programs for weapons of mass destruction. This is a week ago.

Now, we have to find out what the basis, it seems to me, of that statement is. This is the Vice President's statement. I would ask the chairman that we ask the Vice President for the basis of that statement which he made publicly just about a week ago.

Senator ROBERTS. Would the Senator yield on that point?

Senator LEVIN. I'd like to first, if I could, just ask our chairman whether or not we could ask the Vice President for the basis of that statement that was made a week ago?

Senator ROBERTS. I think I have an answer for you if you'd yield.

Senator LEVIN. I'd like to hear it frankly from the Vice President in writing.

Chairman WARNER. We have to continue here, colleagues. I'm going to ask the indulgence of the committee while the chair requests that the committee act on the following list of military nominations. A quorum now being present, I ask the committee consider a list of 4,763 pending military nominations. The nominations have been before the committee the required length of time and no objection has been raised regarding them.

Is there a motion to favorably report the 4,763 nominations to the Senate?

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Senator LEVIN. Support.
Chairman WARNER. Second? All in favor, say aye.
(A chorus of ayes.)
Opposed?
(No response.)
Motion carried.

Senator LEVIN. My final question, Dr. Kay, subject to the chair perhaps commenting on my request is this: Is it your judgment that the aluminum tubes that Iraq was trying to acquire were intended or used for a centrifuge program to enrich uranium for nuclear weapons? Is that your view?

Dr. KAY. Senator Levin, this is an area which falls into what Senator Warner referred to, where I think it's important that the investigation continue. It is my judgment based on the evidence that was collected, but there clearly can be more, that it's more than probable that those tubes were intended for us in a conventional missile program rather than in a centrifuge program, but it's an open question that's still being investigated.

Senator LEVIN. All right. But that is your judgment that they were not related to uranium enrichment?

Dr. KAY. That is my personal judgment that they probably were not, based on evidence, but there's still more evidence possible to gain.

Senator LEVIN. One short final question, my second final question: In your judgment, had Iraq reconstituted its nuclear weapon program in the way you understand the word reconstitute?

Dr. KAY. It was in the early stages of renovating the program, building new buildings. It was not a reconstituted, full-blown nuclear program.

Senator LEVIN. Thank you.

Chairman WARNER. Senator, I will take under consideration your request. I think Senator Roberts, when it becomes his turn, may have a statement that's relevant to it.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. Thank you, Dr. Kay, for your service to our country for many years. We're very proud to have people like you who are willing to serve the country.

Dr. Kay, you find yourself today in a very highly charged political environment, and you are by nature a scientist and not one who's familiar with these kinds of passions around an election year. I think it's important to establish your belief and that of the overwhelming body of the intelligence and the Intelligence Community, both here, overseas, and in the Clinton administration, the following facts. Saddam Hussein developed and used weapons of mass destruction. True?

Dr. KAY. Absolutely.

Senator MCCAIN. He used them against the Iranians and the Kurds? Just yes or no?

Dr. KAY. Oh, yes.

Senator MCCAIN. Okay. You and inspectors found enormous quantities of banned chemical and biological weapons in Iraq in the 1990s?

Dr. KAY. Yes, sir.

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Senator MCCAIN. We know that Saddam Hussein had once a very active nuclear program?

Dr. KAY. Yes.

Senator MCCAIN. He realized and had ambitions to develop and use weapons of mass destruction?

Dr. KAY. Clearly.

Senator MCCAIN. So the point is, if he were in power today, there is no doubt that he would harbor ambitions for the development and use of weapons of mass destruction. Is there any doubt in your mind?

Dr. KAY. There's absolutely no doubt, and I think I've said that, Senator.

Senator MCCAIN. Good. But it's important to emphasize this point when we look at what has obviously been an intelligence failure.

Dr. KAY. I agree.

Senator MCCAIN. When you answered a question from Reuters, what happened to the stockpiles of biological and chemical weapons that everyone expected to be there, your answer was simple: "I don't think they existed."

So what needs to be established here is that when we—at least I hope is your—I believe is your view and certainly mine, that, as you just stated, America, the world, and Iraq is a far better and safer place with Saddam Hussein gone from power, and the sacrifice made by American citizens and that are serving and sacrificing today was not only worth it, but very important to the future of the Middle East and the world. Do you share that?

Dr. KAY. That's certainly true, Senator. I've probably learned not to speak to wire reporters and even to watch out for Senators who want one-word answers. It tends to compress complex issues.

Senator MCCAIN. But you agree with the fundamental principle here that what we did was justified and enhanced the security of the United States and the world by removing Saddam Hussein from power?

Dr. KAY. Absolutely.

Senator MCCAIN. Okay. That's important to establish because now in this political season, those are attempted to be mixed, that because we didn't find the weapons of mass destruction, therefore, the conflict was not justified. That's why I think it's important to establish those salient facts.

But obviously we were wrong, as you said. Now why were we wrong?

Dr. KAY. Senator, I wouldn't pretend that I know all the answers or even know all the questions to get at that. I am convinced that that is the important forefront of the inquiry that quite frankly you must undertake. I have hypotheses of where I think things generically have occurred. I think we became almost addicted to the incredible amount of effort that United Nations Special Commission (UNSCOM) and U.N. inspectors could produce on the scene and that flow of information——

Senator MCCAIN. Including intelligence gained by the previous administration?

Dr. KAY. That's correct. Did not develop our own human intelligence (HUMINT) sources there. Now, this really goes back, quite

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frankly, the change took place if you look at it, it goes back to the Carter administration when, as a result of things that had occurred in the Vietnam area, essentially our HUMINT capability was spun down and we got in the habit of relying on intelligence collected by liaison services. If a liaison, an individual from another country, gets caught as a spy, it doesn't make the front page of The Washington Post or The New York Times, it's not politically embarrassing, and quite frankly, you don't have a dead American, so there are good reasons to do it.

More importantly, and things that I think you have to worry about, we have all stressed, why didn't the Intelligence Community collect the dots prior to September 11? It all looks clear in retrospect. Quite frankly, the most common problem you have with analysts is you do not want them to overanalyze the data. If there are only a few dots connected, maybe they don't belong connected.

I'm convinced in this area, partly because of Iraqi behavior, to a large extent because of Iraqi behavior, they cheated, they lied, we knew it, UNSCOM, the U.N. had caught them, we got in the habit of new pieces of information accreted to this overall consensus view without challenging that consensus.

Senator MCCAIN. Do you believe that those that provided false intelligence estimates ought to be held accountable?

Dr. KAY. Absolutely.

Senator MCCAIN. Do you believe that we need an independent, outside investigation?

Dr. KAY. Senator——

Senator MCCAIN. You don't have to answer that if you don't choose to, Dr. Kay. That's not a fair question.

Dr. KAY. No, it is really what goes to the heart of the integrity of our own process. I generally believe that it's important to acknowledge failure. I also think we have enough history to understand that closed orders and secret societies, whether they be religious or governmental, are the groups that have the hardest time reforming themselves in the face of failure without outside input.

I must say, my personal view, and it's purely personal, is that in this case, you will finally determine that it is going to take an outside inquiry both to do it and to give yourself and the American people the confidence that you have done it.

Senator MCCAIN. Not only for what happened in the past, but so that we can rely on intelligence in the future.

Dr. KAY. I would say entirely with regard to the future. Witch hunting is not a profitable inquiry. It is for the future that you need this.

Senator MCCAIN. Well, again, every once in a while we get a chance to see again someone who has served his country with a distinction and honor and courage, and we thank you, Dr. Kay.

Dr. KAY. Thank you, Senator.

Chairman WARNER. Thank you, Senator McCain.

Senator Kennedy.

Senator KENNEDY. Thank you, Dr. Kay, and I join in all of those that thank you for your service to the country. It is impressive indeed and we thank you for your appearance here before the committee.

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Now, the real question, Dr. Kay, is whether there was a greater failure than a failure of intelligence. Yesterday you said if anyone was abused by the intelligence, it was the President of the United States rather than the other way around. But Greg Thielmann, the former Director of the Office of Strategic Proliferation and Military Affairs in the State Department's Bureau of Intelligence and Research, stated last July, some of the fault lies with the performance of the Intelligence Community, but most of it lies with the way senior officials misused the information they were provided.

He said they surveyed the data, picked out what they liked, the whole thing was bizarre. The Secretary of Defense had this huge Defense Intelligence Agency and he went around it. In fact, with regard to the question of Iraq's chemical weapons program, the Defense Intelligence Agency got it exactly right in September 2002. According to the February 2, 2004, edition of the New Republic, an agent's report stated 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. Yet the President told the United Nations in September 2002 that Iraq likely maintains stockpiles of VX, mustard, and other chemical agents.

The next month, the State Department said that the evidence was inadequate to support a judgment that a nuclear program had been restarted. It said it was impossible to project a timeline for the completion of activities it does not know are happening. Yet in an October 7, 2002, speech in Ohio, President Bush said if the Iraqi regime is able to produce or steal an amount of highly-enriched uranium larger than a single softball, it could have a nuclear weapon in less than a year.

Then in September, the Department of Energy had serious concerns about whether the famous aluminum tubes had anything to do with the Iraqis' nuclear programs, yet Secretary Powell used the information in his speech before the United Nations.

In October of last year, the CIA sent two memos to the White House voicing strong doubts about the reliability of claims that Iraq was trying to obtain nuclear materials from Africa, but the President still used the statement in his State of the Union address attributed to British intelligence.

Many of us feel that the evidence so far leads only to one conclusion, that what has happened was more than a failure of intelligence, it was the result of manipulation of the intelligence to justify a decision to go to war. Now, did you have the access to those different intelligence reports as a civilian?

Dr. KAY. Yes, Senator. I had full access to everything in the Intelligence Community with regard to Iraq.

Senator KENNEDY. You had it with regard to the State Department's intelligence and the Department of Energy?

Dr. KAY. Yes.

Senator KENNEDY. All of those with their conclusions that I've read, just summaries of their conclusions?

Dr. KAY. I had that as well as the individuals. I had on my team members of the Department of Energy who had, in fact, participated in writing that view.

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Senator KENNEDY. Can you give us any explanation of why these agencies in retrospect appear to have had it right, and the information that the administration used appeared to have it wrong? What weight was given to these reports when you look at them in retrospect, and when you have a number of those that were involved in the reports believing that the information reports were used selectively to justify a policy decision to take the country to war?

Dr. KAY. Senator Kennedy, it's impossible in the short time I have to reply to take you fully through that, and in fact, that's my hope that Senator Roberts and his committee will have done that, but let me just say that there's a selective process that goes on both ways. There were people in the DOE who believe that those aluminum tubes were indeed for a centrifuge program.

It's a lot easier after the fact and after you know the truth to be selective that you were right. I've gone through this a lot in my career. All I can say is if you read the total body of intelligence in the last 12 to 15 years that flowed on Iraq, I quite frankly think it would be hard to come to a conclusion other than Iraq was a gathering serious threat to the world with regard to WMD.

I remind you, it was Secretary Cohen who stood, I think in this very committee room, with 5 pounds of flour and talked about anthrax.

Senator KENNEDY. Just to come back because we have limited time—gathering serious threat, you really think that that is—those are the words that brought us to war, those were the words that justified us going into war, a gathering serious threat?

Dr. KAY. Senator, that's probably far more in your realm than in my realm. I'll take Senator McCain's defense of I being a knave in the world of politics.

Senator KENNEDY. Well, no, I appreciate your response and I appreciate your appearance here and I think that when we look at who has the responsibility, I think it's fair enough to look not only what the intelligence, but all the intelligence agencies, and as Senator Levin said how that intelligence was used. I think that is going to be the key to find out just what representations were made and the reasons why they were made, because I think on the basis of the information we have now, I think it's difficult to draw a conclusion that it was used selectively and in many instances manipulated to carry on a policy decision. Thank you.

Chairman WARNER. Thank you, Senator Kennedy. Colleagues, just an administrative announcement. We had scheduled this morning a 9:30 hearing on three nominations for the Department of Defense. It was my judgment, given the uncertainty of the weather, that we could not hold it at 9:30. This committee will meet at 4:00 for the purpose of considering the following nominees: Mr. Di Rita, Assistant Secretary of Defense for Public Affairs; Mr. Harvey, Assistant Secretary of Defense for Networks and Information Integration; and Mr. Chatfield, Director of Selective Service. I do hope as many as possible can attend. Thank you very much.

Senator Inhofe.

Senator INHOFE. Thank you very much, Mr. Chairman. Dr. Kay, I would repeat everything that has been said about you and your service, and I appreciate it. I appreciate also the private conversations we've had and your being very straightforward.

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Just out of curiosity, and this is something you may have a difficult time answering because you're trying to get into somebody else's mind, but in our conversations when we talked a year ago now, a year ago this month, I believe, about the fact that there were weapons of mass destruction, we knew he had used weapons of mass destruction. Then last week there was an article where you were quoted to say that contemporary documents that proved Iraq destroyed the weapons of mass destruction in the 1990s. Just out of curiosity, do you have any idea why Saddam Hussein did not come forth with that evidence when it would have been to his benefit to do so?

Dr. KAY. Senator, we've wrestled hours with trying to get an explanation for Iraqi, and particularly Saddam's, behavior, when in fact his rule was at stake, and why he didn't do something else. I think most of us come down on two essential issues. He did not want to appear to the rest of the Arab world as having caved into the U.S. and the U.N., so the creative ambiguity of maintaining weapons was important to him and his view of Iraq and particularly himself and the rest of the world.

The second is domestic politics. We often forget that he used chemical weapons against the Kurds and the Shia and that was a continuing threat to him, and he thought that that in fact gave him leverage against it. That's our best explanation.

Senator INHOFE. That's a very good answer. I appreciate that. Senator Levin talked about large caches of weapons of mass destruction, and Senator Warner talked about some small ones. I think back and I can recall when—and this is about a year ago now, it was in January, I believe—that they found 11 chemical rockets that had the capabilities of holding 140 liters of something like VX gas, which he had used in the past.

Now, if we found those rockets and they could carry 140 liters of VX, which all the professional people in discussing this said could kill a million people, why is that not considered a weapon of mass destruction?

Dr. KAY. Well, I think, Senator, the reason—and we actually found additional warheads during—the same warheads——

Senator INHOFE. Some 36 after that, I believe.

Dr. KAY. Yes, afterwards, is that there was no evidence—look, clearly they were in violation not having declared those and turned them over, but there was no evidence that the warheads themselves had ever been filled. But they were in violation of Resolution 1441. They possessed those and they should have declared them and allowed the U.N. to destroy them.

Senator INHOFE. Okay, because I consider that to be a weapon of mass destruction—anything that can potentially kill a million people is a weapon of mass destruction.

Now, the third question that I have is you were quoted as saying that you believed Hussein had been pursuing a course of constructive ambiguity before the war, bluffing about having weapons to give the illusion of power and to put up a deterrent, and your quote was, "Saddam wanted to enjoy the benefit of having chemical or biological weapons without having to pay the cost."

Now, in other articles, you had suggested that Saddam was being deceived by a scientist who duped him into funding nonexistent

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programs. You're quoted as saying, "whatever was left in an effective weapons capability was largely subsumed into corrupt money-raising schemes by scientists skilled in the art of lying in a police state."

Well, some have said there is some inconsistency there. Which of those do you think is the case, that he thought he had them or that he knew he didn't have them and was bluffing?

Dr. KAY. Saddam being deceived was a common phenomenon after 1998 and crossed all areas, not just WMD, as it became a more corrupt society. I remember the New York Times editorial which sees an inconsistency being doing that. I actually don't see it. He knew he had the capability, he wanted to enjoy the benefits of others thinking he had it. The deception related to more advanced programs and that's where it continued up until the time of Operation Iraqi Freedom.

Senator INHOFE. I appreciate that very much and thank you for your responses.

Chairman WARNER. Thank you very much, Senator. Senator Robert Byrd just informed me that he is required to be on the floor for the vote and other reasons. I will put into the record his questions and I thank you very much.

Senator Clinton.

Senator CLINTON. Thank you very much, Mr. Chairman, and Dr. Kay, I join with my colleagues in thanking you for your public service, and it's with great admiration that I have followed your service over a number of years and I thank you greatly.

I just wanted to clarify a few other comments that had been reported in the press just to get the record clear in my own mind. There were some references to your decision to leave the effort due to the failure to have the full complement of analysts, translators, interrogators, and others to work with you. I know that that was a concern that had been expressed to this committee and others because of the movement of people out of the group into counter-insurgency efforts. Was that a factor in either impacting the quality and substance of the search or your decision to step down?

Dr. KAY. Senator Clinton, there were two factors that led me to decide it was the appropriate time to return to private life. When I agreed to take on this job, I had only two conditions. When you negotiate with the Federal Government, salary is not one of the things you can negotiate. I said there were two things that were important to me. One is that the instrument we were going to use, the Iraqi Survey Group, be totally focused on elimination of WMD as long as we carried out that mission.

That was based on two facts. One, my experience with the Federal Government is that when you have multiple masters and multiple tasks, you get the typical interagency mush and you don't get directive action and I didn't think we had the time to do that.

The second was, and I told George Tenet directly this, my undertaking this task from the President of investigating and trying to determine reality compared to your estimates, you are going to run a moral hazard, the moral hazard of self-investigation, and that the only way I was willing to be a party to that is that I had the independence to choose the instrument that was going to be doing it

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and I had the resources that were necessary to do it, and that was agreed.

By September, I was in the process of running battles, both with the DOD and with the Intelligence Community that wanted to redirect resources and the activities of the ISG to the looming political insecurity crisis that was Baghdad. I perfectly understood the difficultly we were having. I lived there, I knew how hazardous it was. I just thought the ISG and those resources were inappropriate for it.

By November, I had lost that battle, the decision had been made to give ISG parallel priorities in addition to WMD and resources were being halved off, and at that point, I did what I had said in June when I took the job, I'm simply not prepared to run that moral hazard for myself or for someone else under those conditions.

No big surprise and no anger on my part. I was clear going in, it's actually in writing on those two points. When the administration felt that it couldn't live up to that any longer because of the security situation, which I fully understood, I thought it best to let someone else who has—who I have great respect for and has capabilities and I think he can do it—take on the job.

Senator CLINTON. Dr. Kay, I appreciate your explanation, but it raises two additional questions, at least in my mind, that we have addressed one before, and that is whether we had enough resources on the ground to begin with, making this Hobbesian choice as to whether to continue with the full complement of resources and personnel you required and were agreed to be given to you to pursue this important task, or having to divert because we didn't have enough resources on the ground to do the other job illustrates clearly the confusion at the very center of this whole enterprise, post-military action.

But it raises an additional concern to me, which is that this wasn't a priority. If you have a real priority, you figure out how to meet that priority. I think that the administration's decision to divert resources and personnel speaks volumes about what they really thought was at stake. I think by certainly November, if not by September, the fact that so much of the documentary evidence had been destroyed in the looting, the preliminary reports that you provided to Congress and the administration, presaged what has become the final conclusion you've reached, that we were not going to find such evidence of weapons of mass destruction, certainly raises for me serious questions about the real intention of the administration to begin with.

Second, I'm very interested in what you have concluded about the Iraqi decisions to abandon WMD because of the U.N. inspection process, that during the 1990s in fact, the international community's efforts to discover and destroy Saddam's weapons was working. Is that a fair statement of your findings?

Dr. KAY. It's a compressed but fair, and I must say I had a number of former U.N. inspectors working for me. We often sat around and said that it turned out we were better than we thought we were in terms of the Iraqis feared that we had capabilities. Although they took tremendous steps to try to compromise us and to lie, in fact the U.N. inspection process achieved quite a bit.

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Senator CLINTON. Of course my time has expired, but I think that rightly does raise questions that we should be examining about whether or not the U.N. inspection process pursuant to Resolution 1441 might not also have worked without the loss of life that we have confronted both among our own young men and women as well as Iraqis.

Dr. KAY. Senator Clinton, let me just add to that. We have had a number of Iraqis who have come forward and said, we did not tell the U.N. about what we were hiding nor would we have told the U.N. because we would run the risk of our own. I think we have learned things that no U.N. inspector would have ever learned given the terror regime of Saddam and the tremendous personal consequences that scientists had to run by speaking the truth.

That's not to say, and it's not incompatible with the fact that inspections accomplished a great deal in holding a program down, and that's where the surprise is. In holding the program down and keeping it from breakout, I think the record is better than we would have anticipated. I don't think the record is necessarily better than we thought with regard to getting the final truth because of the power of the terrorist state that Saddam Hussein had.

Senator CLINTON. Thank you.

Chairman WARNER. Thank you, Senator. That question you raise is an important one, and our witness addressed it and gave his views about the resources, but I would withhold any final judgment on that issue until we have before this committee General Dayton and General Abizaid.

I talked with General Dayton 2 weeks ago extensively about this issue. He has a somewhat different perspective than our distinguished witness, and as recently as last night I talked to General Abizaid, and he likewise has respectfully a different view.

But there is one point that you all concur on, and that is there came a time in that fall period when we were losing brave soldiers, death, wounded, and otherwise, and General Abizaid felt that he had to call upon some of your people who had capabilities and who indeed were on an ongoing basis contributing intelligence from your work to the war of trying to stop the insurrection in Iraq.

Dr. KAY. Senator Warner, as you understand, competing priorities are the hardest choice that a military commander and others have to make. What most people don't understand, but I know you do, is how genuinely short we are as a nation of people with certain limited capabilities, for example, intelligence officers who speak Arabic. There are more people in this room, or there were at the beginning, than we have in the Intelligence Community who are actually case officers who speak Arabic.

That's not a surprise. The committees, Senator, the Intelligence Committee has addressed it before. The fact is we've done a very poor job of addressing it. Like I say, I have no anger or bitterness about it. It was simply a fact of life.

Chairman WARNER. But I think you also concurred that——

Dr. KAY. We peeled resources away.

Chairman WARNER.—the urgency of the loss of life and limb among the coalition forces dictated bringing together quickly such resources as we could to try and stem the tide of that loss.

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Dr. KAY. Absolutely. That was certainly General Abizaid's judgment.

Chairman WARNER. I thank you. I'll go vote, and colleagues, I will——

Senator SESSIONS. Mr. Chairman, if you're going to go vote, I'm not safe staying. As long as you're here, I know they won't call that vote.

Chairman WARNER. I realize that, but I'll guarantee you you're going to be protected.

Senator SESSIONS. I will just be brief. Thank you, Mr. Chairman. I think everybody on this committee believed that there were weapons of mass destruction in Iraq, very few doubted it. I remember very distinctly the most questions on that was Chairman Warner, and he would ask every major witness, when this war is over, are you going to find weapons of mass destruction there? I believe he did it a half a dozen times.

General Abizaid recently testified that after he was asked that question, he went back to CENTCOM, called all his staff officers in and said, Senator Warner asked me this and are we going to find it, and everyone told him that they would. So I don't feel like there's any deliberate activities here that would indicate that the President or somebody is trying to manipulate intelligence.

In fact, I felt always that the strongest argument for taking military action was the fact that the war of 1991 never really ended. We were shooting at the Iraqis, we were dropping bombs on them, they were shooting at our planes, they were in violation of U.N. resolutions, they had promised to eliminate weapons of mass destruction as part of that 1991 agreement to stop the American attack on Baghdad, and they didn't comply with that.

There was pressure in the world to quit embargoing the people of Iraq, they were suffering, and we had to make a decision. Were we going to allow them to not comply with the agreement they made to end that war, allow them to be free to build weapons of mass destruction and threaten the neighborhood, or were we going to act under U.N. resolutions? Did those resolutions have any value at all?

So the President, I think, could have justified action on that basis had he chosen to. I think that indicates to me he clearly believed there were weapons of mass destruction there or he could have used other arguments. I guess, Dr. Kay, your view is that Saddam Hussein in his own mind had expansionistic intentions with regard to the world and that he felt that the possession or threat of weapons of mass destruction enhanced that ability to be a powerful force in the region. Is that correct?

Dr. KAY. Absolutely right, Senator, I think he—both in the region and he thought of them as a potential weapon to use against his own citizens to enforce compulsion and agreement. I mean, the Kurds and the Shia were threats to Saddam and he recognized them and he had used chemical weapons.

Senator SESSIONS. Now I noticed that, I believe at one point you noted that even his own military officers believed they had them.

Dr. KAY. Yes.

Senator SESSIONS. In other words, they would think—would you explain that?

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Dr. KAY. In interviewing the Republican Guard generals and the Special Republican Guard generals and asking about their capabilities and having them, the assurance was they didn't personally have them and hadn't seen them, but the units on their right or left had them, and as you worked the way around the circle, those defending Baghdad, which is the immediate area of concern, you got this very strange phenomenon of, no, I don't have them, I haven't seen them, but look to my right and left.

This was an intentional ambiguity, and realize freedom of discussion and movement was not something encouraged in Iraq. For example, Republican Guard divisions never entered into the city limits of Baghdad. Only the Special Republican Guard (SRG) was allowed to. You didn't even train in multi-divisional units because of that issue of his concern about them. It was a powerful deception technology. We have it, but we haven't seen it, but we know that someone else has it.

Senator SESSIONS. It is true, I think, no one can dispute, that had he not had these weapons of mass destruction, and had opened his country and plainly demonstrated it, this war would have been avoided?

Dr. KAY. Yes, I think that's true, and that's always been one of the mysteries for all of us to determine how—why would he have run this risk that cost him his regime and the death of members of his family if he didn't have those weapons.

Senator SESSIONS. That was certainly, I think, on the heart and mind of the Members of Congress. We just felt it was so impossible they didn't exist. Now, as your investigation went about, it strikes me that in the time building up to this final initiation of military action that the Iraqi individuals who may have been involved in weapons of mass destruction knew that their programs were the target of this action and that they were in violation of U.N. resolutions, and isn't it true they could have seen themselves as being subject to prosecution for war crimes?

Dr. KAY. Absolutely, and a number of those in custody are worried about that greatly. It is one reason they're not talking.

Senator SESSIONS. So not being unclever, they would know and would have a real incentive to destroy any evidence that they had anything to do with weapons of mass destruction, so we could realistically expect many of the documents that would have shown all these actions are no longer in existence.

Dr. KAY. That's right, Senator, and that's why I referred to the—there's probably a level of unresolvable ambiguity we're going to have to learn to live with about this program.

Senator SESSIONS. I would just add, if you would like to comment, I think that you indicated the Intelligence Community has made mistakes in your opinion and missed much with regard to the ideas about Iraq. I think it's wise that a wise leader in this country, he has different groups of intelligence agencies really try to find out what each is saying, to personally interview as close as he can to the people it involved, and to make sure that he's getting the nuances from different groups.

Do you think the Vice President or other administration leaders should be criticized for talking with individual intelligence agencies as they try to make a decision about whether or not to go to war?

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Dr. KAY. Absolutely not. In fact, Senator Sessions, it's, I won't say funny, it's one of these strange things for those of us inside, I've had analysts complain that no one talked to them and then analysts who are talked to complain. Look, analysts are not generally shrinking—good ones—shrinking violets. They know the difference between people, they're used to being questioned closely, they should be questioned closely, and they are.

That's why I think—I've never met an analyst who felt in this case with regard to these sets of issues that there was any inappropriate pressure, and in most cases, they would love to have been questioned more, certainly by the Vice President or the President or anyone else. That's their profession.

Senator SESSIONS. They long for their opportunity to talk to someone in authority.

Dr. KAY. That's what they do.

Senator SESSIONS. I thought it was odd that the Vice President was criticized for going over on a Saturday morning and sitting down with really true people involved in this and asking their opinions. I just don't think that was a legitimate criticism. Thank you.

Senator ROBERTS [presiding]. It is my distinct pleasure serving as the acting presiding chairman to recognize Senator Reed for any comments he might wish to make.

Senator REED. Dr. Kay, let me also commend you, not only for your service but for your integrity. We appreciate your being here today.

In your discussion with Tom Brokaw, you were asked about the nature of the threat posed by Iraq and Mr. Brokaw said, "but an imminent threat to the United States," and your response was, "Tom, an imminent threat is a political judgment." Now, what does that mean? Does that mean that when you're presented with analysis from—in fact, conflicting analysis—that the President can impose a political calculation? Particularly a president that seems to have a very preconceived notion of the threat from Iraq?

Dr. KAY. Senator Reed, it means that any president, when he's presented with intelligence, has to make a choice about how much risk he's prepared to run for the nation that he leads. It is my belief that regardless of political party, after September 11, the shadowing effects of that horrible tragedy changed, as a nation, the level of risk that all of us are prepared to run, that we would like to avoid, but where you place yourself on the spectrum of how much risk you're going to run is a political responsibility which elected officials have and I certainly don't have.

I think fundamentally that's why in a democracy we elect people like you and we elect a president to make those determinations. It's not a fixed point that is ever going to be carved as pi's constant. It is, what's the world look like and how much risk will I run.

Senator REED. But also, Doctor, that judgment has to be logically related to the evidence you have before you, and like so many, and I think you too, there was a supposition that perhaps had Saddam had chemical or biological weapons, less credibility and claims about having nuclear weapons or a nuclear program, and in fact, not just my conclusion but many people concluded similarly that despite that assumption that there was not an imminent threat to the United States. That wasn't just a political judgment, that was

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looking at the facts that were presented by the Intelligence Community, even if they were flawed, and making a judgment based on those facts.

Dr. KAY. Senator Reed, I think it's often easy to forget that in the case of Saddam, here's an individual who had invaded two neighboring countries, used chemical weapons against one of those, used them against his own neighbors, and who, by U.N. testimony, had cheated and lied for a decade. So, as I look back on the evidence, I understand the decision while honoring the right of any elected leader to choose how much risk he's prepared to run, and that's what I mean by that. I don't think it's something that is a physics constant that you can just pull out of a table.

Senator REED. Dr. Kay, you also were quoted and Senator Kennedy referred to it, "I think if anyone was abused by the intelligence, it was the President of the United States rather than the other way around." Are you suggesting that the President was misled by the American Intelligence Community?

Dr. KAY. No, sir. What I'm suggesting is that the actual facts on the ground will turn out to be substantially different, at least with regard to large stockpiles, than the estimate before, and we better understand why that's true.

There are other reasons and other things about Iraq to be concerned with, and certainly I think Iraq, if you look back at its history of using these weapons, the fact that they remained in violation of Resolution 1441, and all of those facts are provable, but with regard to the actual existing weapons, which people keep coming back to because they are the most demonstrable symbol of the threat, reality is very likely going to turn out to be different than the estimates.

Senator REED. Dr. Kay, you used the term, abused by the intelligence.

Dr. KAY. That's right.

Senator REED. He was misled?

Dr. KAY. If I were your broker and you were investing on my advice, something of course I would not advise you to do, and at the end of the day, I had said Enron was the greatest company in the world and you had lost a substantial amount of money because it turned out differently, you would think I had abused you. I think the estimate is going to turn out to be different than reality. That's abuse as far as I'm concerned.

Senator REED. Part of the intelligence process, as I understand it, is not only the presentation of evidence and analysis by the agencies, but the probing questioning of leaders, decision makers, particularly when the evidence is not totally reconciled. Do you think that those probing questions were made, particularly since so many people in the administration had preconceived notions about the nature of the threat?

Dr. KAY. Senator Reed, I was not party to that. I hope in whatever process of review that's going on that the full record is out there. I will just say I'm convinced myself if I had been there, presented with what I have seen as the record of the intelligence estimates, I would have come to the same conclusion that the political leaders did.

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Senator REED. Dr. Kay, is North Korea today a gathering serious threat?

Dr. KAY. North Korea is an enigma probably with nuclear weapons and long-range missiles. I would probably put it higher up on my scale of gathering threat. I think it's an existing threat.

Senator REED. We are approaching North Korea with the same deeply flawed Intelligence Community that abused the President of the United States?

Dr. KAY. I have no knowledge of whether we're approaching it with the same—in a case where the reality will turn out to be different from the estimate. I just don't know. I think that's an appropriate question for you and others to ask.

Senator REED. Dr. Kay, the U.N. inspectors were readmitted into Iraq for a brief period of time. Had they been allowed to continue their mission with adequate support, would they have likely reached the same conclusion you have?

Dr. KAY. All I can say is that among an extensive body of Iraqi scientists who are talking to us, they have said we had—the U.N. interviewed us, we did not tell them the truth, we did not show them this equipment, we did not talk about these programs, we couldn't do it as long as Saddam was in power. I suspect regardless of how long they had stayed, that attitude would have been the same.

Senator REED. Just one final point because my time has expired. I do recollect that there were some missiles destroyed because of either their disclosure or discovery by these inspectors, which suggested another data point, we seldom remember that too, remember that despite——

Dr. KAY. Absolutely, that's true.

Senator REED. So that there was a degree of cooperation and a degree of success, perhaps not as conclusive as yours, but that was happening, is that correct?

Dr. KAY. It wasn't cooperation. This was the case of the Al Samoud 2 missile, which had been, even under UNSCOM days, a source of dispute with regard to its range. They continued to develop it after the inspectors left in 1998. By the time the U.N. was readmitted and there actually existed Al Samoud 2s, there was no way you could contend that that was shorter than 150 kilometers, and in fact destruction had begun of those missiles, that's correct.

Senator REED. My time has expired. Thank you, Dr. Kay.

Chairman WARNER [presiding]. Thank you, Senator.

Senator Roberts.

Senator ROBERTS. Yes, thank you very much.

Chairman WARNER. I, by way of introduction, Senator Roberts, say that I feel that you and the committee that you lead are making a lot of progress towards coming to a body of fact and putting it together that will help not only Members of Congress, but others trying to have a better understanding of this situation.

Senator ROBERTS. I thank the chairman and I would hope he would write a personal note to Senator Kennedy and Senator Levin, maybe indicate that as well.

Dr. Kay, thank you for your service and thanks to the membership of the ISG team that you led. You have earned our respect. We have repeated that in the Intelligence Committee where you

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appeared as of this morning for 2 hours. That was classified and closed, we won't get into that, but I want to assure you of one thing. There is an outside investigation taking place under the jurisdiction of the Senate Intelligence Committee, which is our jurisdiction and our obligation. This involves 10 staffers working 24/7 on floor-to-ceiling documents, having interviewed over 175 people, analysts, critics, and everybody else that wants to come in. We take that job very seriously and we are progressing. I think that when Members finally get the draft, the first draft of the working paper, many of these questions will be answered. I personally take some umbrage at people, who for one reason or another, think we need to have an outside investigation before our inquiry is even complete.

As a matter of fact, we had a memo that came out several months ago indicating conclusions before we even finished the inquiry, so I have some strong feelings about that. In response to Senator Levin and in reference to the Intelligence Committee inquiry, the draft inquiry report is complete. It will be available to Members next Thursday and for their study and their perusal, and it's going to take some time because you have to wade through this and it's very voluminous. Hopefully during that week they will become educated and many of these questions will be answered.

As I said, we interviewed 175 analysts and critics and some policymakers and others, and like your analysts at the ISG, not one said that they were intimidated or coerced or that their product was somehow manipulated. Every statement referred to by Senator Levin with regard to the administration officials was a reflection of what was provided by the Intelligence Community. I mean, why would you do otherwise?

The reason that the Vice President apparently keeps referring to the trailers as mobile labs is that that is the view of the CIA as I speak, it's on the CIA web page. It is a part of the National Intelligence Estimate, which is provided to the Vice President and the National Security Council and the President. That's what the CIA believes right now, a very clear paragraph that goes into very specific reasons as to why they think that this is a mobile lab.

Now, as you pointed out, there are other points of view. That's always the case in regards to, I guess, intelligence. By the way, this National Intelligence Estimate was mandated by Senator Graham and Senator Durbin in 60—or in 30 days, and so to some extent, I believe part of the problem is it became a dump, if you will, and I don't mean to use that as a pejorative, of all past intelligence, which you have indicated most of us think was on a train that was moving and that train just kept moving and it was very difficult to change the direction of the opinion of virtually every Intelligence Community all throughout the world. I think the draft report again will answer all of the Senators' questions.

You recently have been quoted in the press, as has been said, as saying that the Intelligence Community owes the President an explanation about what went wrong with their analysis. You also said it's not a political issue—well, it is, but it shouldn't be—it's an issue of the capabilities of one's intelligence service to collect valid and truthful information.

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What do you think went wrong, both in the analysis and collection of intelligence? You've already touched on this. Have you seen any evidence through your discussions with the Intelligence Community analysts or officials over at the DCI that the Intelligence Community recognizes that all of the intelligence and their analysis was so wrong? Any admission on that part, and do you have any thoughts on what should be done to fix these problems?

I am really interested in your commentary on the dots. Prior to September 11, if you had 10 dots to connect, you had to connect eight or nine of them to at least have a report and a threat warning out there. After September 11, so that we wouldn't be risk-averse, if you connected two or three dots and you didn't report, you were really in trouble. So the Intelligence Community can't have it both ways. First, we really criticized them for saying wait, wait, wait, wait until you have the appropriate jigsaw puzzle in place that you can really read the intelligence. After September 11, why, we have a situation, say, if you have two or three of the dots connected, why, then you're criticized as well.

Now, that's a speech, not a question, but if you have any thoughts on this, I'd appreciate hearing from you.

Dr. KAY. No, I think the very appropriate thing, Senator Roberts, would be to concur.

Senator ROBERTS. I appreciate that. What went wrong, both in the collection and the analysis of intelligence? You've touched on that.

Dr. KAY. Senator Roberts, you're far more likely having done, as you quite rightly point out, a far more exhaustive study than I've had the opportunity. I've been on the sharp end of the stick out there. I think it will turn out that we will find that there were major shortfalls in collection. As a Nation, and this really goes back over 20 years, we decided to concentrate most of our intelligence resources on technical collection. We got better definition from space. There's only so much you can see when you're looking at judgments of this sort, and we're particularly bad about understanding societal trends.

I think we will, in the end, when the appropriate historian comes around, be able to say that somewhere after 1998 the social glue that held Iraq together had been corrosively destroyed by Saddam Hussein, that it had become the ultimate criminal terrorist conspiracy internally. That's one reason we're having such great difficulty and our troops are having such great difficulty putting it back together again. It's not just the number of troops there, it's that the glue that holds people together in a relationship that allows cooperation was destroyed by Saddam Hussein, just as the infrastructure was destroyed.

But that turns out to be one of the hardest things for intelligence services to read. As you recall, we got it wrong in World War II, and it was the very famous strategic bombing survey. All the intelligence leading up through the end of World War II said the bombing campaign was destroying the German will to fight, the civilians were less willing, and the German war production was falling. As it turned out afterwards, the German will to fight increased under the bombing and the war production went up to the last 2 months of the war, it was still increasing.

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In the case of the Soviet Union—well, skip Vietnam, but very similar estimates about societal determination and economy turned out to be wrong. After the fall of the Soviet Union, what had looked like a 10-foot power turned out to be an economy that barely existed and a society that had horrible levels of human health problems, of lack of education and all, leading to the current situation. It is a fundamental issue that we have—all intelligence services have had understanding that, and yet in many ways, it turns out to probably be far more important than counting trailers, and yet we've invested in counting trailers as opposed to understanding the other.

I am convinced that we have sadly underfunded and developed our human intelligence capability, we have genuinely become risk-adverse, and looked at ways that will not put Americans either at political or human risk as being spies, and tried to do it on the cheap using others. I think there will turn out to be trade-craft problems that you probably have already identified, and I haven't had the advantage of reading your report, that are out there that need to be looked at.

The last one, which you referred to, we've put the analysts under tremendous pressure, and the tendency is to overanalyze limited data. There is a point where an analysts simply needs to tell people, I can't draw a conclusion, I don't have enough data, go get me more data. But in the wake of September 11, believe me, that is difficult to do. It's always been difficult, but it is much more difficult now.

Senator ROBERTS. I thank you for your candor and service. My time has expired, but I would say we are constantly having these "Oh my God" hearings in the Intelligence Committee, "Oh my God," how did this happen? You go back to the U.S.S. *Cole* and you go back to the Khartoum chemical plant, you go back to the nuclear test in India, you go back to Khobar Towers, you go back to the Belgrade bombing, and it goes on and on and on, same kind of thing. I hope that we have to come up with better solutions on how to fix these problems that we have been referring to. I know that Senator Collins is waiting patiently so I yield back my time.

Chairman WARNER. We're going to recognize Senator Dayton in between.

Senator ROBERTS. Oh, I'm sorry.

Chairman WARNER. Thank you.

Senator DAYTON. Thank you, Mr. Chairman. Dr. Kay, I met you in July in Baghdad, it was 115 degrees there and we left after 3 days and you stayed on and under those conditions to persevere as you have and with the veracity you've shown in your report and your candor here today, I would echo the others. Your service to our country has been not only patriotic but heroic, and I thank you for that.

It seems to be one of the traps that we may be falling into here, and I'm not an expert, so I ask you the question, are all weapons of mass destruction alike? It would strike me intuitively they are not, and if we're talking about biological capabilities, chemical capabilities, I would draw a line, say nuclear strikes me as something of a different order, conventional weapons, just about everything

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we put into the air or on land or in the water these days I would think constitutes a weapon of mass destruction.

Are we putting ourselves in a trap here where anything of any viability at all starts to fall into that category?

Dr. KAY. It's an important question, particularly as technology drives capabilities of even what formerly would have been said conventional weapons of capability to do mass disruption at least, if not mass destruction. Same thing is true in the cyber era. We have today an e-mail worm spreading throughout the world that is doing vast mass disruption, if not mass destruction, and may be doing that in some areas.

So these old terms don't serve us particularly well. It's one thing I hope to write about as I finish this.

Senator DAYTON. Which weapons of mass destruction qualify in that upper echelon of truly mass destruction?

Dr. KAY. I think 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. The fire bombing of Tokyo in terms of number of people killed was roughly equivalent to a single bomb in Nagasaki, but it took a lot more aircraft to do it.

So I still treat, and I think we should politically treat nuclear as a difference. But I must say, the revolution in biology, some developments in cyber, I think we're going to have a blurring out there of capabilities, and that makes the control, it makes the intelligence problem far more difficult to estimate.

Senator DAYTON. Based on your general knowledge, how many countries would you say in the world today would qualify under the category of developing weapons of mass destruction and related program activities, or having such activities?

Dr. KAY. Senator Dayton, I hesitate to give you an off-the-cuff number because I know I'll probably—it's going to be like the 85 percent, I'm going to have to live with it for longer than I want to. I would say that in the nuclear area, in addition to those that we know have—possess nuclear weapons, that includes India——

Senator DAYTON. I want to go to the vernacular that we're using, this broader category.

Dr. KAY. The broader category? Oh, I suspect you're talking about probably 50 countries that have programs that would fall somewhere in that broader vernacular.

Senator DAYTON. So if we're going to take out those countries or their governments which are engaged in what we would call weapons of mass destruction-related program activities, we're going to be cutting quite a wide swath.

Dr. KAY. Senator Dayton, I think you're on to the issue. We no longer are going to be living in a world in which we can control capabilities. Intentions are what are going to be important. Quite frankly, that's what made Saddam so dangerous in my view. Here was an individual who had invaded his neighbors, used chemical weapons against one of them and used them against the others, so it was hard to have a benign interpretation of that individual's intentions, and the real challenge for intelligence is going to be giving to our political leaderships not just judgment about capabilities, but judgments against real intentions, and that is tough.

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Senator DAYTON. Mr. Chairman—well, I guess he left—I will commend the chairman even in his absence for holding this hearing and letting these answers, the chips fall where they may, because I think what we're at issue here goes way beyond politics or partisan advantage one way or the other. This is about the survival of our country and the world as we know it.

I guess I would ask you in the context of I'm assuming that our—and I'm not on the Intelligence Committee—but I'm impressed that there are very dedicated men and women who are spending all of their lives trying their very best to come up with the answers to these very difficult questions and assessments. Given the limits that you say which go both ways, and Iraq may be less developed and countries like Iran and Libya farther developed, what does that argue about the wisdom of a policy of pre-emptive strikes?

Dr. KAY. I don't know about the wisdom, but it certainly argues about the difficulty of doing it wisely.

Senator DAYTON. I guess it would strike me, and I hope—again, the chairman's not here—but I would hope we would hold a hearing or two about the success, it appears, with regard to Libya and the administration's role, and I gather the preceding administration's role, so in secret negotiations which have brought about a denuclearizing of that country and that threat, which certainly sounds like it would qualify in the upper echelon as you describe it, and contrast that approach and its success without a loss of American life in that country to what has occurred in Iraq.

So I hope we can look at both sides of this question and I will give the administration credit, whatever the case may be, for its successes, but I also want to recognize, I think, the grave risks that this limitation of intelligence information and its veracity imposes on a doctrine that says we're going to preemptively strike a country that we believe has things that we've now discovered in this case, with the best of intentions I'll concede that, they did not have.

My time is up, but again, I thank you for your public service, sir.

Senator ALLARD [presiding]. Since the chairman of the Armed Services Committee has had to go vote, I'll go ahead and be chairman temporarily until he gets back. In the meantime, it's my turn to go ahead and talk to Dr. Kay and visit with him about some of the issues related to his duties.

First of all, I'm trying to think back at the time our men and women were going into Iraq, there was a lot of concern at that particular point in time about Iraqis having weapons of mass destruction, particularly chemical weapons, and did you find evidence that there was chemical weapons there at the battlefield that perhaps maybe was not in large quantities, but small quantities, that would have been a decided threat to our men and women on the field?

Dr. KAY. Senator Allard, that's really one of our immediate focuses, because both of the concern, and consequently the threat it posed to Americans, but also because of the evidence we kept, as you will recall, discovering Iraqi defense chemical gear, protective suits and all, as we moved across. We have not found any chemical weapons that were present on the battlefield even in small number.

Senator ALLARD. So all we had is a history of him having used weapons of mass destruction using chemicals because we knew

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about the Kurds and where he had used chemicals in that particular instance, is that right?

Dr. KAY. No, I would not say it was just the history. There was real reporting that he had it, Iraqi defectors and others, that he had it, and ambiguous conversations overheard. So it was more than a history, it was a reality, and if you've ever had the opportunity to put one of the U.S. protective suits on, you realize the men and women you saw dressed up in those chemical suits as they marched towards Baghdad did that out of real fear that he had chemical weapons. That was not because of political pressure. You don't put those suits on for political pressure. They're too uncomfortable. It was a genuine fear based on the best available information that was present at that time.

Senator ALLARD. Yes. I recall about the time that our men and women were going into the field in Iraq that also they discovered a nuclear disposal site, if you recall that. They had that on TV and they actually showed the barrels of nuclear waste.

Dr. KAY. Oh, yes, okay.

Senator ALLARD. Do you recall that?

Dr. KAY. Yes, I do.

Senator ALLARD. What was the source of that nuclear material? Why was that there and what was the source of that nuclear material?

Dr. KAY. There was a large amount of nuclear waste and material that the U.N. had purposely left there as the Iraqi program was taken down.

Senator ALLARD. That was after the Persian Gulf conflict?

Dr. KAY. That was after the Persian Gulf conflict. What was removed was the direct use material that could have been used in a normal fission weapon. On the other hand, there was a large amount of yellow cake, there was nuclear residue, highly radioactive, various sources, there was a large cesium source, a cobalt source, and others that in fact had been stored away, and I think the waste you're referring to is that.

Senator ALLARD. Do we have any idea of the origin of that material?

Dr. KAY. The origin of most of that material is pretty well understood. The Iraqis both mined uranium of their own as well as imported uranium in the 1980s from Africa.

Senator ALLARD. What country in Africa would that come from?

Dr. KAY. Niger.

Senator ALLARD. Niger?

Dr. KAY. The French had provided reactor fuel, as had the Russians provided reactor fuel, and some of the waste probably had origins in that.

Senator ALLARD. Do we know when that nuclear program was brought down and when that material was stored in that waste site?

Dr. KAY. We know very precisely, Senator. We started doing it in late 1991, and it continued—it was almost complete by 1995 as material was moved out of Iraq and was sealed and was stored. It's very well-documented. The International Atomic Energy Agency did a good job.

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Senator ALLARD. Okay. The National Intelligence Estimate concluded that Iraq could build its first nuclear weapon when it acquired sufficient weapons-grade material. Did you think that conclusion was accurate?

Dr. KAY. Yes. You have to realize this was a country that had designed and had gone through a decade-long nuclear program, they knew the secrets. But we took away the critical element in making a nuclear weapon once you know the secrets, which they had and they'd run the physical tests, is the actual fissile material. It's difficult, expensive, takes a fairly substantial footprint to develop. The estimate, as I read that estimate, and I think all of us did who were concerned with it, is, if they managed to acquire a sufficient amount of plutonium or high-enriched uranium from a place like the former Soviet Union stockpile, how long would it take to fashion that into a nuclear explosive device, and I think that estimate was actually fairly conservative.

Senator ALLARD. You ran over one part of your statement that I want to go back. You said they actually ran a test on the material that they had there?

Dr. KAY. With regard to nuclear material?

Senator ALLARD. Yes.

Dr. KAY. During the 1980s they ran a number of tests using both what are normal simulants that you use in a physics experiments, as well as they had separated out a small quantity of plutonium and they had some high-enriched uranium that had been supplied in French fuel.

At the time of the first Gulf War, we subsequently learned, they were taking the French fuel and trying to produce, fashion together, a crude nuclear explosive device, for which they had run experiments understanding how much conventional explosions it would take to move the mass together. They were good physicists.

Senator ALLARD. Did they use the aluminum tubes at that point in time to enrich their uranium, do you we know?

Dr. KAY. No, they did not. They relied on different processes.

Senator ALLARD. Okay. I have one other question. What can you tell us about Iraq's efforts to restarts its nuclear program in 2000 and 2001?

Dr. KAY. As best as has been determined, and this is obviously something the investigation is continuing, in 2000 they had decided that their nuclear establishment had deteriorated to such a point that it was totally useless. They started—the main center is a center called al-Tuatha, which is—in fact, I think you probably flew over it—you generally do when you go around Baghdad. It's a large site but the physical facility had seriously deteriorated and they started building new buildings, renovating it, hiring some new staff, and bringing them together.

They ran a few physics experiments, re-ran experiments they had actually run in the 1980s. Fortunately, from my point of view, Operation Iraqi Freedom intervened and we don't know how or how fast that would have gone ahead.

Senator ALLARD. So it was definitely a threat as far as you're concerned, in 2001, 2000?

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Dr. KAY. Given their history, it was certainly an emerging program that I would not have looked forward to their continuing to pursue. It was not yet up as a full nuclear production site again.

Senator ALLARD. Thank you, Dr. Kay. I now call on Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman. Dr. Kay, thank you again for being here. I know that a number of people have expressed their gratitude and I want to join in that chorus. Let me just ask a few questions here. How long were you searching for weapons of mass destruction in Iraq?

Dr. KAY. I arrived in June and I left in late December.

Senator PRYOR. Were you on the ground most of that time?

Dr. KAY. Yes, only except the time I was required to be back here before you.

Senator PRYOR. Right. How many sites did you or your team visit in Iraq?

Dr. KAY. Senator Pryor, I'm sure we can give you the exact number, but it was in the hundreds.

Senator PRYOR. Also I'm sure you looked at, what, thousands of pages of documents, is that fair?

Dr. KAY. Closer to hundreds of thousands of pages of documents.

Senator PRYOR. How many inspectors and, I guess you might want to call them analysts, did you have on your team there to assist in this effort?

Dr. KAY. Roughly in terms of—they fall into three areas, to give you the count that is—you can deal with and make some meaning. In terms of subject matter experts, that is, analysts, we had at the max count somewhere around 110, maybe as high as 130 at the very max, it can go lower than that at other times. In terms of case officers, these are clandestine officers who are used to working in the field and equipped by trade craft and training to do that, the figure comes out to be somewhere around 30 to occasionally 40. Translators and interpreters was roughly somewhere between 300 and 400 at various times.

Senator PRYOR. Okay. Did you have full access to our intelligence, our pertinent intelligence on WMD?

Dr. KAY. Absolutely.

Senator PRYOR. Nothing was screened from you as far as you know?

Dr. KAY. As far as I know, nothing was screened, nor do I believe anything was screened.

Senator PRYOR. Right. At what point during this process did you start to get that uneasy feeling about WMD in Iraq where you thought you might not find anything or your search might be unfruitful?

Dr. KAY. Senator Pryor, it was not a 3 a.m. wake-up call in the middle of the night, it was the emerging picture that we had gathered, and by late September, early October, we were all starting to look at the data and look at the conclusion and come to it, and certainly by November, I think if asked, and I have been asked internally, I kept saying, I think we have a program here that looks different from the estimate with regard to assembled weapons.

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Senator PRYOR. All right. At what point did you begin communicating that with the Pentagon or the administration or the CIA? I don't know exactly who you're reporting to.

Dr. KAY. It was with the intelligence agencies. Oh, I think my first communication about this program may look like one that doesn't have assembled weapons but has capability to rapidly restart his program actually came in July based on, here again I'm, as all analysts, this may have been a case of connecting dots when there were few dots, and certainly by the fall, there was a fairly regular dialogue with regard to these.

Senator PRYOR. Okay. I know that when you're talking to the intelligence agencies, to some extent you're talking to the White House, but did you ever report this directly to the White House?

Dr. KAY. No. In fact, I've spoken to the President, directly to the White House only once. It was in July when I was back. The channels went, as they appropriately should, through the DCI.

Senator PRYOR. In this summer and fall period where you started expressing concerns and started to tell them about your findings and some of your conclusions perhaps, what was their response to that? What was their reaction to that?

Dr. KAY. It was the absolutely appropriate one: where's the data? What's the data? Have you considered this? Will you look here? Have you done that? It was the healthy skepticism and dialogue that I too exercise with regard to my own staff and I expect to be held to. There was absolutely no inappropriate response, no refusal to consider it. It was the healthy skepticism and demand for data, which is appropriate.

Senator PRYOR. You've testified today that we know Iraq had some WMD and used some in the 1980s and on into the very early 1990s. What is your thinking on how they got from that point, where they clearly had some, to today, where I guess your conclusion, it's fair to say, is they don't have a weapons program, and if they have any WMD at all, it's very small.

Dr. KAY. It's not that they don't have a weapons program—didn't have a weapons program. I hope they don't now. It is that they had a weapons program, but it was a program activity designed to allow future production at some time, and that the missile program was actually moving ahead. I continue to emphasize I think is one that we've paid inadequate attention to.

I think how they got there is they got there because the U.N. inspectors did a better job. I had them tell me in 1991, they told me personally, directly, "you're not behaving like we thought a U.N. inspector would behave." I took that as a compliment. We were intrusive, we were aggressive in the best sense of that word. As we kept finding things and then the key defection, we come back to Hussein Kamal in 1995, which they feared would lay open their whole past 5 years of deceit and lying to the U.N., they decided to reduce the thing that they were most vulnerable to, and that's large retained stocks, knowing that they could—at some point they'd get rid of us, they thought, and they could restart production, so they kept the technology but they didn't—they came to what I think is a fair conclusion, why keep stockpiles of weapons that are vulnerable to inspectors when you've lost your delivery capability? Wait until you have your delivery capability and then it's a relatively short order.

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We have documentary evidence and testimony that Saddam and Uday and Qusay asked in both 2000 and 2001 how long it would take to restart production of mustard and VX nerve gas. This was a key point in part of this reckoning of when did you think they might be following a different strategy than the estimate. When you get senior officials asking, how long will it take you to produce these agents, that tells you at least to be awake to the possibility that that means they didn't have those agents.

Senator PRYOR. So, and this is my last question because I'm out of time, is it your opinion then that the regime that was set up after the Gulf War in 1991 was at least to some degree effective in ending their WMD capabilities?

Dr. KAY. I think UNSCOM deserves a considerable amount of credit for disarming and destroying, the typical thing which all of us who served on UNSCOM are proud of. In terms of destruction, we destroyed more of the WMD program than bombing did during the Gulf War.

I think where we always worried, and appropriately so, we know now, is getting at what they retained and what they hid, because you were up against things that were smaller, easier to hide in a terrorist regime. We took the easy stuff out, nuclear reactors, big plants, large amounts of material, and that gets to your earlier very good question, why did they change the strategy? They changed to the things that we were not particularly good at unmasking, that would allow them to restart the program as soon as they got rid of us.

Senator PRYOR. That's all I have, Mr. Chairman. Thank you.

Chairman WARNER [presiding]. Thank you very much, Senator. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman. Dr. Kay, let me start by joining my colleagues in thanking you for your most impressive extraordinary public service and we very much appreciate your being here today to share your experiences and your conclusions with us.

I am deeply troubled by what appears to be a colossal failure by our intelligence agencies, and I would note that this failure spans agencies, it spans years, but it also spans countries. It really is a global intelligence failure, it wasn't just our intelligence agencies alone that so misread this vital situation.

I personally believe that the war was justified for the reasons that Senator McCain listed as well as others. We know that Saddam had chemical and biological weapons at one point, we know that he invaded his neighbors, that he used chemical weapons to kill some 5,000 Kurdish citizens, we know that he planned to assassinate a former President of the United States, he shot at our planes, he violated the cease fire agreement for the first Gulf War, he ignored numerous United Nations resolutions. So there was lots of justification to hold Saddam accountable.

But what if we're faced with making a decision where there isn't this additional justification? That is what is so frightening to me, because we make such serious life and death decisions relying on this intelligence information. I, for one, don't know whether or not to trust the intelligence estimates on North Korea now. We've

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turned out to be wrong in the other direction on Libya and Iran. So that's why this is so troubling to me.

It's particularly troubling because the briefings that we had were so detailed and so specific, and I want to cite an example. We had known based on the Iraqi declarations to the U.N. inspectors that Iraq had produced thousands of tons of deadly chemical weapons such as mustard gas, sarin, and VX, as well as very large quantities of biological agents such as anthrax. I recall being told, and I used it in my statement, that when the inspectors left in 1998, there were very large discrepancies between the weapons that were declared and the amounts that were destroyed.

For example, I was told that at least 1.5 tons—tons—of deadly nerve agent, the VX, were unaccounted for. What, in your opinion, happened to all of those chemical agents and biological agents? Where did the VX and anthrax go?

Dr. KAY. It is still a subject of investigation. Let me deal with the VX. Interesting enough, the Iraqis, we now have the records of the Iraqis as they tried to investigate that in order to get the evidence to answer UNSCOM and later UNMOVIC on that.

This is what happens. Remember, they had the ends of two chaotic wars. They had the end of the Iran/Iraq war and they had the end of Gulf War II. One large amount of VX—it had been forward deployed in Iraq towards the Kuwaiti border—as they were moving it back in 1991, there was a traffic accident. The truck carrying it was totally consumed in a fire. They documented it in part, but there was the usual embarrassment of do we tell Saddam we've just burned up a large amount of chemical warfare agent, so it wasn't fully reported and fully documented. They didn't do analytical sampling so they had nothing—and only partial records.

That now looks like an explanation that increasingly looks like it was true. Some of it was simply accounting errors that were wrong in material balance. Others are going to be in what I call this unresolved ambiguity, that we may simply never know.

Senator COLLINS. I'm intrigued by the interviews that you conducted with some of the Iraqi scientists, who outlined a plan of deception of their own where they may have told Saddam what he wanted to hear for fear of the consequences to them if they said they couldn't deliver on certain weapons. That leads me to ask you, do you believe that Saddam himself believed that he had these stockpiles of chemical and biological weapons? I realize that's in some ways an unanswerable question, but what is your feeling on that, what's your judgment?

Dr. KAY. It's one of the toughest questions around and we have just little pieces of evidence, so let me tell you now what I believe, because I don't know, or what I think is true, but what the evidence shows. We have these questions about how long will it take you to produce? It sounds like he knows he doesn't have anything and so he's asking for restarts of production, and these included Saddam, Uday, and Qusay.

There are other reports from the interrogations that at times Saddam referred to secret stockpiles, small amounts that were existing, no confirmation of that. My suspicion is that he probably thought he was closer to getting it, could restart faster than the scientists and engineers knew it would take. So when it really

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came down, these requests, one in—I think it's two in 2001, in which they gave him estimates that were longer than he obviously had expected them to be, was when they were confronting the truth. I think he had been told they had got rid of it all but that we could really turn the tap on very quickly, and it turned out they lied about how quickly. It was quick but it wasn't as quick as he anticipated.

But this is one of those areas, as Senator Warner correctly keeps referring to, as where the investigation really does need to continue.

Senator COLLINS. Thank you.

Chairman WARNER. Thank you very much, Senator.

Senator Ben Nelson.

Senator BEN NELSON. Thank you, Mr. Chairman. Dr. Kay, I want to add my appreciation for your candor. It's very refreshing to see such public candor in a time when too often the trend is progressive candor, but I want to thank you for many of your points that you've made because I think it helps us understand the importance of intelligence and the importance of accurate intelligence, and yet the difficulty there is in first of all achieving the role that you need to gather intelligence, let alone establishing its accuracy.

It's based on that that I have concerns about the use of preemptive force being predicated on intelligence. I think many supported the President's decision to use force to liberate Iraq and believe that the world's a safer place because of Saddam being in a prison cell. But many of us supported Saddam's removal because we believed in the credibility of the intelligence that was provided, and we believe also, and I believe personally, that the President did not intentionally mislead the American people, nor do I believe Prime Minister Blair would mislead his public.

But there is unquestionably a credibility issue here that must be addressed. That credibility problem involves the accuracy of the intelligence information, or lack of accuracy, its uses, and most likely, its embellishment. Your findings indicate that Iraq had only a rudimentary chemical, biological, and nuclear program, and you've identified and you've said that weapons of mass destruction-related program activities, and I have to ask you, what does that mean? What are weapons of mass destruction-related program activities?

Dr. KAY. That includes, for example, and take the specific examples of the Iraqis, a program to develop a substitute for a major precursor for VX using indigenous production capability and indigenous chemicals so they would not have to import it.

It includes a study, for example, on a simulant for anthrax. Pre–1991, their anthrax was liquid. They had tried to freeze-dry it and get it down to the dry anthrax, which is stable and much more deadly, lethal, as we found out here. By using this simulant, they actually pushed about two generations the production capability. Now, for this simulant, the same production capability that produces it, is exactly the same that produces anthrax, so they in fact had moved ahead their anthrax capability by working on a simulant.

So it's in those areas that you get program—they had looked at the lethality of various agents and classified them. That's WMD-related work.

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Senator BEN NELSON. All right. You've indicated that you've found no evidence of existing stockpiles of WMDs. Is it possible that they found their way to Syria? Is there any way of knowing whether they found their way to Syria or to another location?

Dr. KAY. In terms of possibility, you can't rule out anything. The way I tried to direct our activities, I knew we were not going to get permission to conduct inspections in Syria as much as I would professionally and personally have enjoyed it. I also knew that the intelligence we collected that showed movement of material across the Iraq/Syrian border didn't show what was in the containers.

So you try to answer that question by saying, was there something to be moved back across the border? Look at production capability. It is totally inadequate for saying, did they move small amounts, did they move technology, did they move documentation? Absolutely possible, I would say probable. But my personal belief is that they did not move large stockpiles because I do not believe they had reconstituted the capability that had produced large stockpiles.

So that's how you get at it. Is it inadequate? Yes. Will it probably always remain as an—unless the Syrian regime really changes course, will it always remain uncertain? Yes.

Senator BEN NELSON. Is it a basic assumption on your part or a suspicion that's based on the evidence that you've said, movement of certain undefined, non-inspected containers or other activity that took it across—took things across the border?

Dr. KAY. My belief that they did not move large stockpiles of WMD to Syria is based on my conclusion that there were not large stockpiles to move. My assumption that it might have been something else is there was so much movement that you just can't rule out what was there. I don't know.

Senator BEN NELSON. Well, is it fair to say that the people who are in charge of the weapons of mass destruction activity probably were better informed about how to secrete it than those who decided to bury airplanes?

Dr. KAY. One makes that assumption.

Senator BEN NELSON. I would think so.

Dr. KAY. I also have to say that the people most likely to have been involved in this movement were the people in the intelligence services and around Uday and Qusay, and fortunately for the world, Uday and Qusay are no longer around to give evidence. A lot of those intelligence agents are either now dead or they're in opposition to the U.S. and not available for ISG. So there is a limited circle of people who probably had first-hand knowledge about moving it, and here's how we get to irreducible uncertainty. They're dying, not soon enough in my view, but they are dying.

Senator BEN NELSON. Dr. Kay, I appreciate very much, as I say, your candor, and I totally agree with you that an outside body investigating and looking into this intelligence credibility issue is important. Certainly it's absolutely critical to the first track doctrine, which has to be on the basis of what you know, not what you think you know, and I appreciate your candor with respect to that as well. I'm certain that that's not always an easy thing to be able to take a position that strong, but I do appreciate that you've done that.

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Dr. KAY. Thank you.

Senator BEN NELSON. Thank you. Thank you, Mr. Chairman.

Chairman WARNER. Thank you, Senator, for your participation.

Senator Cornyn.

Senator CORNYN. Thank you. Dr. Kay, I too want to thank you for your service. I'm deeply concerned lest the politics of the moment overshadow some important facts. First, would you agree that not only are intelligence agencies, but Democrats, Republicans, President Clinton, President Bush, France, Germany, Britain, all agreed that Saddam had stockpiles of WMD?

Dr. KAY. I think that's true.

Senator CORNYN. Until your report, after your long work with the ISG, have you found that anyone, any one of those people or groups that I've identified have in fact learned that it was not true, but nevertheless tried to manipulate it and present it as fact for some improper purpose?

Dr. KAY. No, I know of no manipulation. I know of a lot of skepticism because it was such a widely-held view and wanting to know the facts, and I view that as absolutely appropriate.

Senator CORNYN. So you know of no evidence, no indication that anyone tried to intentionally manipulate the intelligence that we got in order to justify going to war in Iraq?

Dr. KAY. I've seen no evidence of that, nor have I seen any evidence after the fact of anyone trying to influence the conclusions that I or others are reaching as part of the ISG.

Senator CORNYN. Let me just try to nail down a couple other facts. Although it now appears that Saddam, or at least so far appears that Saddam did not have large stockpiles of WMD, he did continue research on chemical and biological and even nuclear weapons, correct?

Dr. KAY. Absolutely.

Senator CORNYN. Would you say then, Dr. Kay, that it was just a matter of time before Saddam would build such stockpiles or have that capability in a way that would threaten not only people in Iraq but people in that neighborhood and perhaps others?

Dr. KAY. I think you will have, when you get the final ISG report, pretty compelling evidence that Saddam had the intention of continuing the pursuit of WMD when the opportunity arose, and that the first start on that, the long pole in the tent, was this restart of the long-range missile program.

Senator CORNYN. So that given time, these programs would have matured and Saddam would have been able to reconstitute his WMD arsenal?

Dr. KAY. I hesitate, Senator, I think that's the safe assumption. What I don't know over time, and I'm more and more struck with, is how corrupt and destructive that society had become, but you can't count on when it would fall apart, and it might fall apart in ways that are far more dangerous, so I think that is the safe assumption.

Senator CORNYN. You said something during your opening statement that intrigues me and something that I'm afraid may be overlooked in all of this back and forth, and that has to do with proliferation. You said that there was a risk of a willing seller meeting a willing buyer of such weapons or weapons stockpiles, whether

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they be large, small, or programs, whether it's information that Iraqi scientists might be willing to sell or work in cooperation with rogue organizations or even nations, but do you consider that to have been a real risk in terms of Saddam's activities and these programs, the risk of proliferation?

Dr. KAY. Actually, I consider it a bigger risk than the—and that's why I paused on the preceding question—I consider that a bigger risk than the restart of his programs being successful. I think the way the society was going and the number of willing buyers in the market, that probably was a risk that if we did avoid, we barely avoided.

Senator CORNYN. Indeed that continues to be a concern we have today in the old Soviet Union and other places where——

Dr. KAY. Pakistan.

Senator CORNYN. Pakistan, other nations where they've had official weapons programs, biological, chemical, and nuclear, the risk of proliferation into the hands of terrorists like al Qaeda and others. Is that correct, sir?

Dr. KAY. That's correct.

Senator CORNYN. Indeed, the deception that you've talked about of Saddam's own military and scientists and others who perhaps led him to believe that they were following through on his orders to develop these weapons of mass destruction, would you say that that deception not only convinced perhaps Saddam to some extent, but indeed that contributed to his intransigence before the world community and defiance of the United Nations and particularly finally of U.N. Resolution 1441?

Dr. KAY. I think that probably did. I'm just hesitant because analyzing the mind of someone who would end up in a spider hole like Saddam requires a skill that I suspect I was not equipped for, but yes, I think that's a reasonable interpretation.

Senator CORNYN. Thank you very much, Dr. Kay, I appreciate it.

Chairman WARNER. Thank you, Senator, very much.

Senator Bill Nelson.

Senator BILL NELSON. Thank you, Mr. Chairman. Dr. Kay, in the interview with the New York Times a few days ago, you had said, "I think that the system should have a way for an analyst to say, 'I don't have enough information to make a judgment.' There is really not a way to do that under the current system."

The New York Times article goes on and this is what I want to ask you about. "He added," meaning you, "that while the analysts included caveats on their reports, those passages tended to drop off as the reports would go up the food chain inside the government." Tell me about that. How is that possible that in the Intelligence Community specifically when caveats are there about intelligence, that they get dropped off as it goes up the pecking order?

Dr. KAY. Senator, when Jim Risen asked me about that, I gave him an example which he did not include in the article. I said writing caveats has about the same intellectual enjoyment as being a writer for the National Geographic. I look at the pictures, I look at the captions. I confess, although I think we have in the basement probably a 20-year collection of National Geographics, I would be hard-pressed on a polygraph to say that I've ever read more than five of them.

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What happens is, it's not that they are physically removed. It's the higher up you go—just in your office, I suspect there are things that your staff passes up that you read the headlines of, you read the summary, you're busy, you have other things to do. Caveats tend to fall into footnotes, they tend to fall into smaller-point type. After all, they're not what most people think, and you have just limited time and attention and it's a natural filtering phenomenon as opposed to a physical cutting. It's just one of those things, and look, I can point to myself as having been a consumer at points of intelligence, you like to believe that you fully read it and you search the caveats and you gave them the same attention that you give the dominant opinion. Very often you don't. There are just not that many hours in the day.

Senator BILL NELSON. Dr. Kay, I, along with 76 other Senators, voted for the resolution authorizing the President, the expenditure of funds for starting the war. I want to tell you some specific information that I was told by the Intelligence Community that has subsequently been made public by Secretary Powell in his speech to the United Nations. At the time it was highly classified and subsequently the administration declassified it and made it public.

I haven't heard these comments from anybody else, but I was told not only did he have the weapons of mass destruction, and that he had the means to deliver them through unmanned aerial vehicles (UAVs), but that he had the capability of transporting those UAVs outside of Iraq and threatening the homeland here in America, specifically by putting them on ships off the eastern seaboard, of which they would then drop their WMD on eastern seaboard cities. You can see all the more why I thought there was an imminent threat. Can you bring any light on this?

Dr. KAY. Senator, what we have spent a great deal of time exploring and it's still being explored is the UAV program. It was a very large UAV program and discoveries were being made really in the last 2 months with regard to that program. The Iraqis acknowledged that at least one of those families of UAVs was a direct descendant from an earlier one that had a spray tank on it.

I think the judgment you will find, certainly it's—let me not judge what others will say—my judgment, having looked at that evidence of the UAV program, is that it was an active program, it's one of these program elements, WMD program elements that continued. It was not at fruition. While it may have been theoretically possible that you could have snuck one of those on a ship off the East Coast off the United States that might have gotten, been able to deliver a small amount someplace, and that's certainly always possible, a good hobbyist could probably do it right now with off-the-shelf material here. I don't think there was the deployment capability, the existing deployment capability at that point for any sort of systematic military attack.

But certainly as a terrorist action, who knows what he would have done. But we just did not discover—I mean, we discovered the UAVs and we discovered their development, and one of them is tied to a sprayer application, but it was not a strong point.

Senator BILL NELSON. Dr. Kay, needless to say, I was absolutely told that that was a fact and I have subsequently found out, now after the fact, that there was a vigorous dispute in the Intelligence

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Community, and one part of the community said that was absolutely not true, and therefore you can see the chagrin with which I approach this discussion.

Dr. KAY. I understand, Senator.

Chairman WARNER. Thank you very much, Senator. Colleagues, I take note that our distinguished witness has been under the scrutiny of Congress since approximately 9:00 this morning when I first met with you in another setting and Senator Levin joined us at that setting. So I would suggest maybe just a few minutes and then we'll conclude what I believe has been a very thorough and broad-ranging series of questions and responses. Your responses are very forthright in my personal judgment.

So, Senator Levin, if you'd like to start off, I'll wrap up.

Senator LEVIN. Okay, thank you. Thank you again, Dr. Kay. Are you familiar with the Carnegie Endowment report?

Dr. KAY. I'm familiar with it, Senator. I've not read it cover to cover.

Senator LEVIN. Let me read you just a portion of it then on page 34. It has to do with the assessments before December 2001 and after December 2001. "Assessments prior to December 2001 had voiced concerns and warned of intentions to restart weapons programs, but did not assert that any programs or weapons existed. Most were consistent with the 1998 intelligence report to Congress while UNSCOM inspectors were still in Iraq," and now I'm quoting that report, that 1998 report from this Carnegie report: "After 4 years of denials, Iraq admitted to a defensive program resulting in the destruction of Al Hakam, a large biological warfare (BW) production facility Iraq was trying to hide as a legitimate biological plant. Iraq still has not accounted for over 100 BW bombs and over 80 percent of imported growth media directly related to future Iraqi production of thousands of gallons of biological agent. This lack of cooperation is an indication that Iraq intends to reconstitute its BW capability when possible."

That's the assessment prior to 2001. After 2001, the assessment was they have biological weapons in their possession, not that they intend to reconstitute its BW capability when possible, which is the prior assessment, but that after 2001, after November 11, in effect, they have possession, inventories, stockpiles of weapons of mass destruction. Do you see a difference between the before and after?

Dr. KAY. Senator Levin, I don't think that is a fair—as my memory, and I don't have the documents in front of me, I do not think that is a fair characterization of the intelligence reports and judgments prior to 2001. I refer you again, if you go back to Secretary Cohen's testimony before this committee, Secretary Cohen in the Clinton administration was not referring to anthrax that might be reconstituted, produced in some reconstituted program, he was referring to actual weapons.

Senator LEVIN. Which Iraq had at what point? We've gone back to at least look at his—the part that we're able to get on Secretary Cohen, which was an interview on a TV station.

Dr. KAY. But there was also testimony.

Senator LEVIN. It seems from this he's talking about what they had in the early 1990s and what we caught him with and what that can do, what that anthrax can do and what they destroyed,

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that's what he was talking about in that interview. Are you saying he came before this committee?

Dr. KAY. My memory is it was this committee. It may not have been this committee.

Senator LEVIN. But you're saying that Secretary Cohen said, in our judgment, they have anthrax, they are producing anthrax, and here, this bag of 5 pounds is what they can do? That's what you're saying today?

Dr. KAY. My memory is that in holding that 5-pound bag and talking about how much destruction that could do, he made reference to Iraq having those capabilities.

Senator LEVIN. Currently?

Dr. KAY. That's my memory, sir, but you have the record, you have a staff behind you, I don't.

Senator LEVIN. We'll check it, because it's pretty important because you're saying that Secretary Cohen said that they—the same thing basically as we were told immediately prior to the attack on Iraq, which is that they had possession of BW weapons and here's what 5 pounds can do. I'm not saying he didn't say that, by the way. I'm going to go back and check too. But you're now saying that we better check the record before——

Dr. KAY. I'm saying that my memory is that that's what he said, but I always believe in checking the record.

Senator LEVIN. Okay. We will surely do that to see if your memory's correct. But let me then also read to you something from the assessments on the BW. This is the report, this is the last Clinton administration report for the period January to June 2000 on BW, and I'm going to read you this paragraph and then I'm going to read you the report for the period of January to June by the Bush administration and I want to see if you think they're the same.

Here's what the last Clinton administration report said: "In 1995, Iraq admitted to having an offensive BW program and submitted the first in a series of full, final, and complete disclosures that were supposed to reveal the full scope of its BW program. According to UNSCOM, these disclosures are incomplete and filled with inaccuracies. Since the full scope and nature of Iraq's BW program was not verified, UNSCOM assessed that Iraq continues to maintain a knowledge base and industrial infrastructure that could be used to produce quickly a large amount of BW agents at any time if needed."

Knowledge base and infrastructure that could be used to produce—now this is the report for the period January to June 2002 of the Bush administration. During this reporting period, Baghdad continued to pursue a BW program. Continued to pursue a program. Do you consider those words to be the same as continuing to maintain a knowledge base and an industrial infrastructure that could be used to produce? You consider those to be the same assessments?

Dr. KAY. I'm not sure they're terribly different.

Senator LEVIN. Are they somewhat different?

Dr. KAY. They're somewhat different. Quite frankly, your memory is better than mine. I'm not sure that is the total scope of what the Clinton administration had on the biological program at that point. I remember a more voluminous statement about it.

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Senator LEVIN. It is, it's far more. I'm trying to obviously—because you can't quote the entire—to pick out representative parts.

Dr. KAY. I understand that, but in judging similarities and accuracies, selection is always a danger in any field.

Senator LEVIN. It is, I agree, by anybody that attempts to communicate that's always a problem.

Dr. KAY. Absolutely.

Senator LEVIN. But what I would like you to do then, because you've made a representation here that these were the same assessments that were made by both the Clinton intelligence folks, and the Bush intelligence folks, that you go back and see whether or not in fact that is accurate.

I've given you quotes and I can continue to show differences. The Carnegie report shows significant differences between intelligence. It's not so much Clinton/Bush, it's prior to September 11, after September 11. That's the key thing when intelligence at that point changed significantly in the analysis of the Carnegie folks. I would think that, since you're making a statement that it didn't, that you take a look at at least their assessment and the documentation that they provide that shows the significant shift in intelligence before and after September 11. Are you willing to do that?

Dr. KAY. Senator Levin, I'm always happy to take homework assignments from you. I hope it comes with an address for one of those undisclosed locations. Quite frankly, after I get out of here, I'm going to tell Senator Warner I'm disappearing to an undisclosed location for a couple of weeks.

Senator LEVIN. You're entitled to it.

Dr. KAY. But I certainly will do that. It's a point well taken.

Senator LEVIN. You're very much entitled to it. One other comment here. People have talked about France, Russia, and everybody else. This is a quote from Chirac, I don't know whether this is representative or not: "I have no evidence that these weapons exist in Iraq," Chirac said. "U.S. officials, however, say they are certain that Iraq has the weapons and insists that it must turn them over for destruction or face war." That's what his quote is in The Washington Post in February 2003. Now, maybe you have other information.

Dr. KAY. There are other quotes from the French and from Chirac.

Senator LEVIN. Where Chirac says they do have weapons?

Dr. KAY. Yes.

Senator LEVIN. Okay. That's just one quote. Russia, however, said that they did not have, or that they had not seen undeniable proof of Iraqi arms programs or terrorist ties. That's a quote we have in the Associated Press, maybe that's not accurate or representative. Do you know whether Russia——

Dr. KAY. I don't—the Russian intelligence I don't have on the tip of my tongue unless——

Senator LEVIN. All right. Have you been asked by the intelligence, by the CIA, for whom you were working until a week ago, I believe, whenever.

Dr. KAY. That's correct.

Senator LEVIN. Have you been asked to give a final report of your views?

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Dr. KAY. I did a final briefing out for the DDCI and the DCI of what I found. It was an oral briefing. It lasted a substantial portion of a day. I think they fully understand what I concluded in my report at that point, yes.

Senator LEVIN. Do you know whether or not they made notes of your briefing?

Dr. KAY. There were note-takers in the room but I don't know what——

Senator LEVIN. I think we either, and it's not up to me, I'm not the chairman, but it seems to me it's important for the history and for the future that we have your views in a formal report. You didn't give us written testimony today, it was just a couple days that you had the invitation of the chairman to come here, so I'm not at all critical, by the way, of that, believe me. I'm not critical of the chairman, I'm not critical of you, either one. I'm glad you're here.

But I do think it's important that we get your views, in some kind of a formal, cohesive way because they're valuable to us, we've obviously followed your views very carefully, the country has. It seems to me in these circumstances that you should put, the way you want to say it, your views, for the record, for the Nation, for us, even though we're not in the middle of an inquiry in this committee, I wish we were frankly but we're not, I'm trying to do the best I can as ranking member, but the Intelligence Committee is, so perhaps they would ask you. I can't ask on behalf of Senator Roberts either.

But in any event, if asked, by either our chairman or by Senator Roberts, would you be willing to provide your final report, on the way out?

Dr. KAY. If asked by those two Senators, and certainly the senior Senator from the Commonwealth of Virginia where I live, my general policy, as I told Senator Warner when he asked me to appear here, is never to say no to Senator Warner. There may a point in my life when I decide that's unwise, but I have not reached that point yet.

Senator LEVIN. Most of us are in the same position. We don't say no to Senator Warner as a matter of fact. Okay, that's then up to those two Senators——

Chairman WARNER. I think that you raise an interesting point and I've given it some consideration and I will discuss it with our distinguished witness, but it seems to me it could well be done in the context of your commenting on the next interim report that would be forthcoming.

Dr. KAY. I leave it to you.

Senator LEVIN. One other question that I would hope the chairman would take under advisement. That is that we ask the CIA if they have taken notes of a day-long debrief that they share those notes with us. Your comments here obviously are significant, your comments here period. Your statement in the New York Times has been read by, I'm sure, not just millions of New York Times readers but by every member of this committee and their staff, probably more than once. That's how significant those views are, so I would think that we ought to take full advantage at least of the notes of the CIA at a minimum that they took of a day-long debrief.

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Again, I close with my statement of thanks for your willingness to come as a private citizen and to share your opinions with the committee and with the Nation.

Chairman WARNER. Thank you, Senator Levin. Do you have any final comment? I would simply ask one last question. I think there may be an omission in the record that should be plugged. 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. There's no evidence that I can think of that I know of. This was obviously an investigative target. There may well have been evidence produced since I left or will be by the time of the March—it's certainly something that has a great deal of attention.

Chairman WARNER. Thank you. The hearing will now be concluded with my, again, expression of appreciation to you and your very lovely wife, who made it possible for you to be here today.

Dr. KAY. Thank you very much. I'll convey that.

Chairman WARNER. We are adjourned.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

IRAQ SURVEY GROUP FUNDS

1. Senator BYRD. Dr. Kay, Congress has appropriated very large sums of money to the search for Iraq's weapons of mass destruction. In April 2003, Congress appropriated $300 million for the search, and in November 2003, Congress approved another substantial amount of funds, the exact amount of which is classified. How much of these funds have been spent to date?

Dr. KAY. As I have now left U.S. Government service, I no longer have access to financial data for the ISG and this question should be directed to the Department of Defense as the agency that controlled ISG finances.

2. Senator BYRD. Dr. Kay, do you have any estimate of how much it will take to complete the ISG's mission later this year?

Dr. KAY. The question of how much time will be required to complete ISG's mission depends upon what that mission is, the resources that will be made available for that mission/missions, and the security environment within Iraq which greatly impacts the pace of ISG's work.

3. Senator BYRD. Dr. Kay, you have said that the work of the ISG is about 85 percent complete. Does the ISG still require that huge amount of funds if its work is so close to completion?

Dr. KAY. I believe that about 85 percent of the work necessary to understand the status of Iraq's WMD programs at the time of the war, and particularly to answer the question as to whether they had large stockpiles of WMD, has been carried out. I do not believe that completing that work will require "huge" amounts of funds, but a deterioration of the security environment in Iraq and any greater use of contractor personnel to replace the Government employees used during my period in Iraq could substantially increase the cost.

4. Senator BYRD. Dr. Kay, you spoke at today's hearing about the diversion of personnel away from the ISG to purposes not closely related to the search for weapons of mass destruction. Do you believe that funds have been, or will be, diverted from the ISG to carry out activities unrelated to its charter?

Dr. KAY. As the charter of the ISG has been changed from when I took over in June, I believe that any diversion of funds will be related to the new charter of ISG as promulgated by the Department of Defense.

[Whereupon, at 1:49 p.m., the committee adjourned.]

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4.AR 5/3:S.HRG.108-678

S. HRG. 108–678

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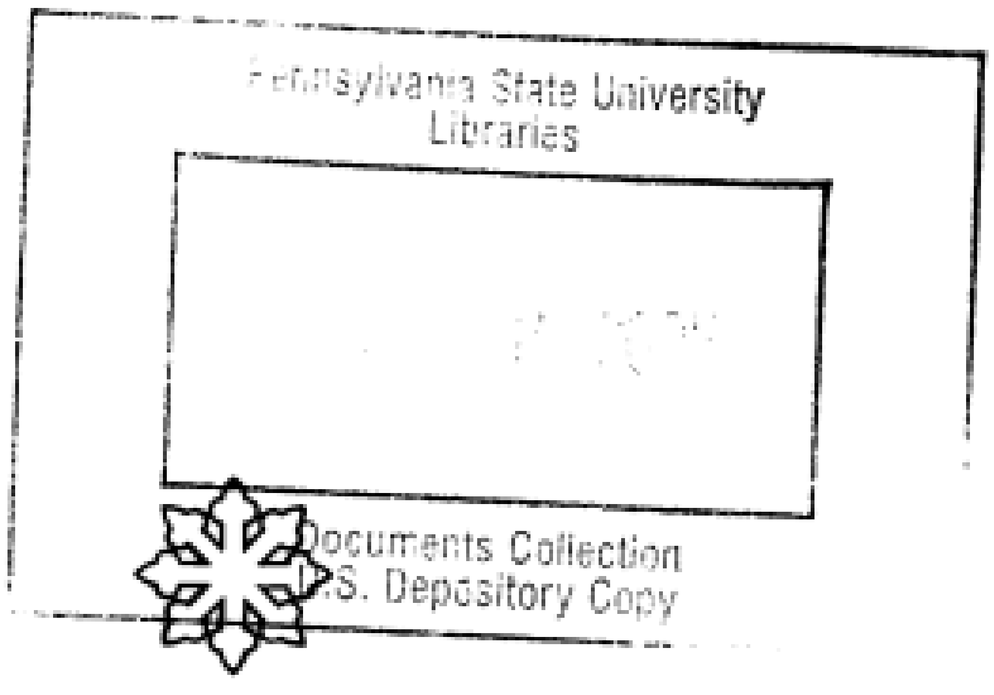

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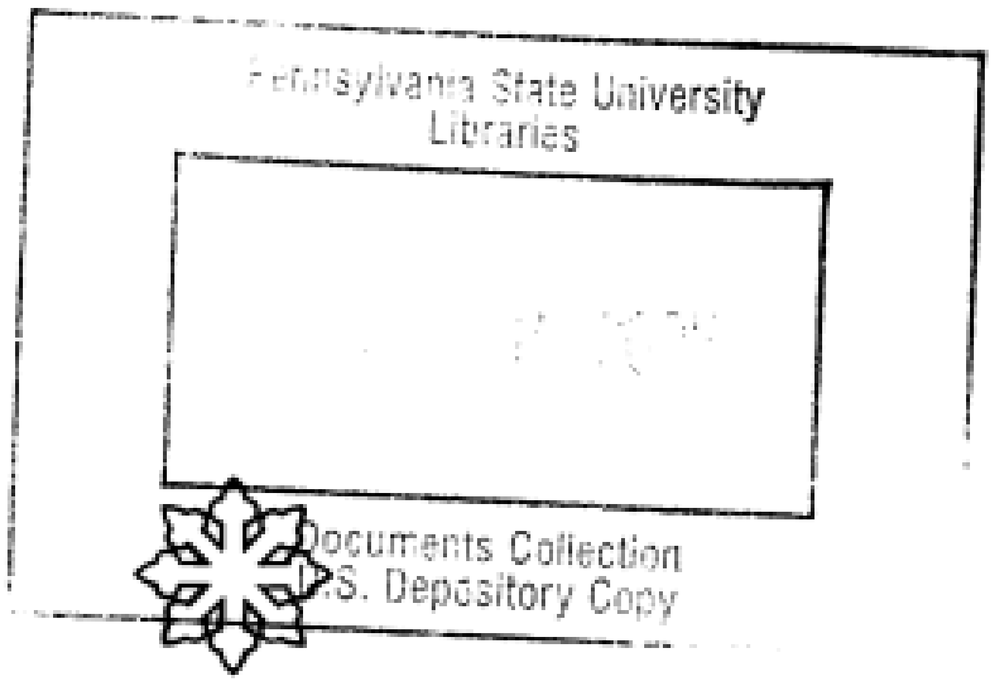

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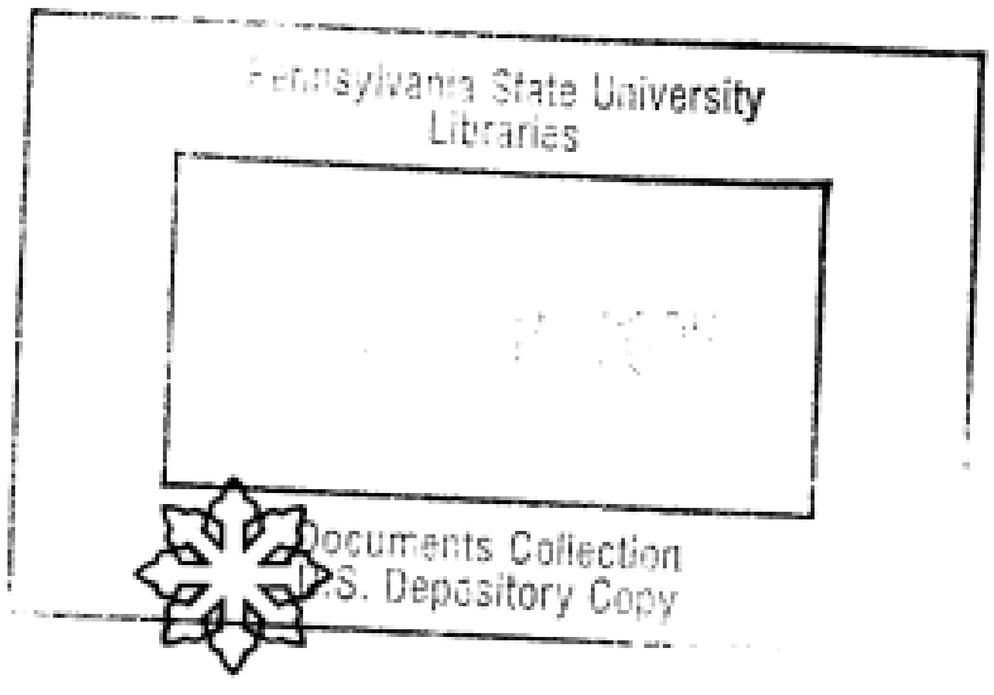

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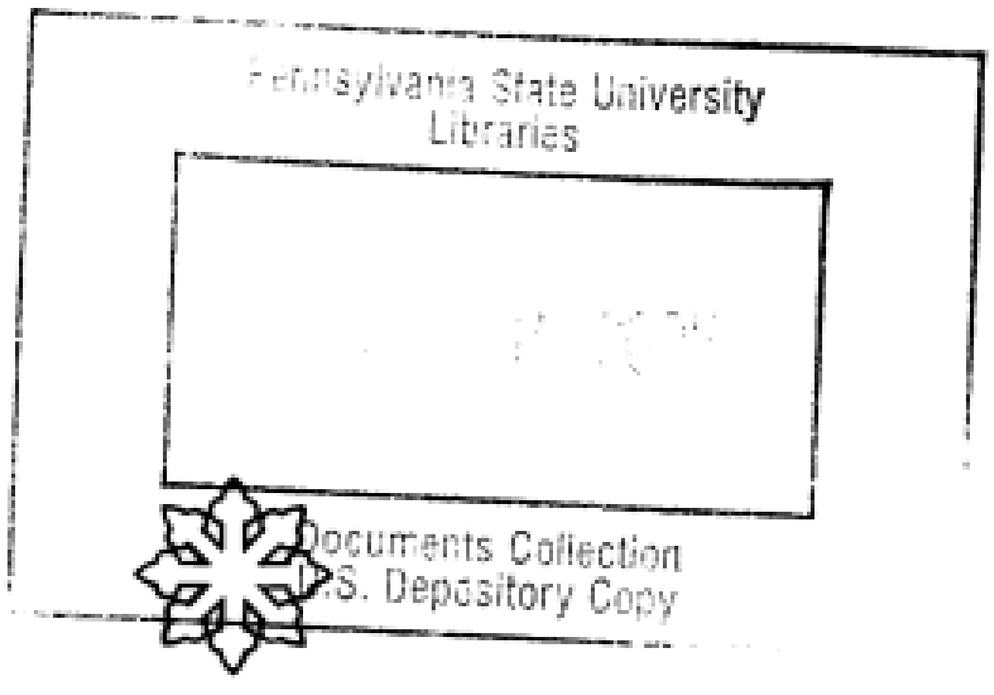

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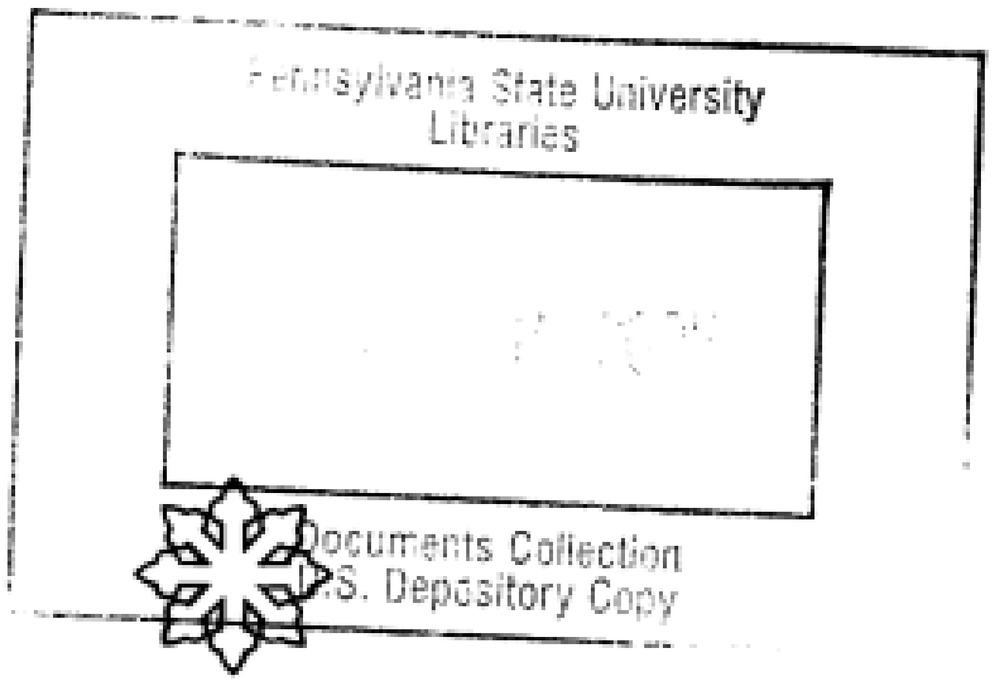

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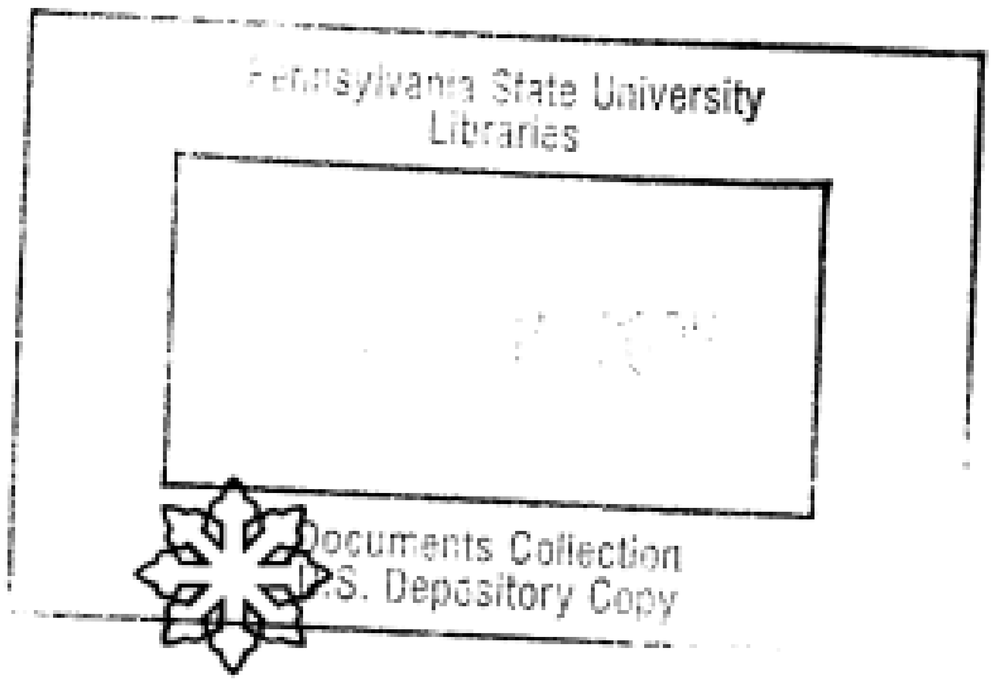

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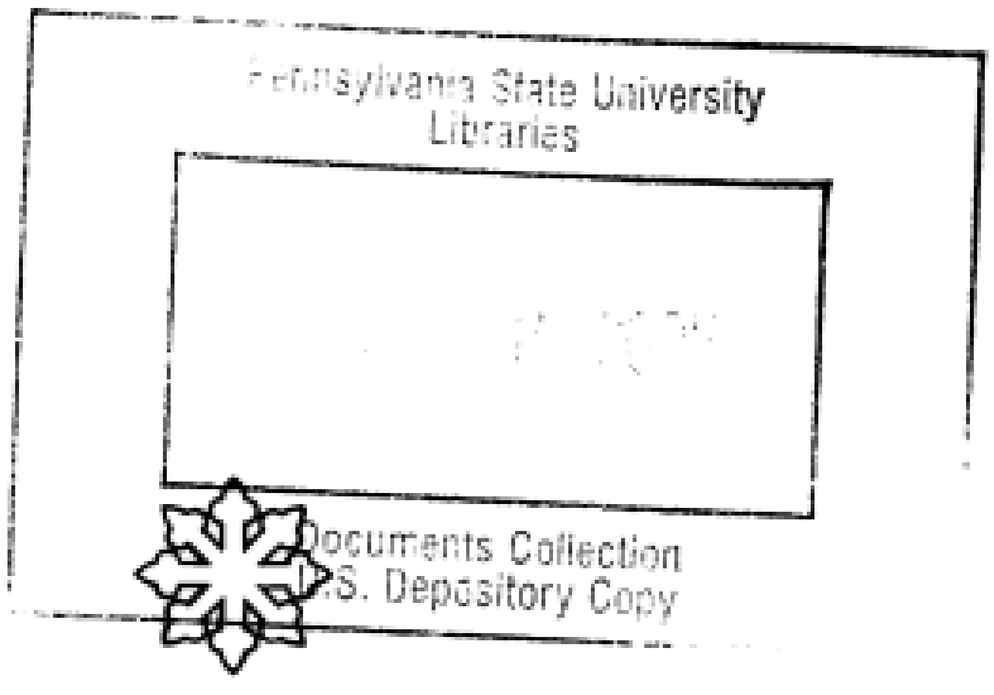

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