Congress of the United States
House of Representatives
Washington, DC 20515

October 21, 2004

The Honorable David M. Walker
Comptroller General
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Comptroller General Walker:

We are writing to ask you to investigate the apparent misuse or mishandling of intelligence expertise at the Department of Energy (DOE) in 2002, and to provide recommendations to correct problems that you find. In 2002, top nuclear experts at the Department held strong views that there was a lack of evidence supporting the claim that Iraq was restarting its nuclear weapons program. Yet in the development of the October 2002 National Intelligence Estimate, DOE officials reportedly represented that DOE supported the view that Iraq was reconstituting its nuclear weapons program. DOE has important and unique expertise in nuclear weapons matters, and efforts to ignore or subvert that expertise would be highly troubling.

The *New York Times* recently published an article that detailed a key dispute over evidence that Iraq was reconstituting its nuclear weapons program. According to the article, a junior CIA analyst in 2001 began advocating a theory that Iraq had attempted to procure aluminum tubes for use in enriching uranium to make nuclear weapons, and other CIA officials advanced that theory. The article also reported, however, that since 2001, Energy Department nuclear intelligence experts had strongly refuted the CIA's theory and said the tubes were likely for use in conventional rocket missiles and were identical to tubes Iraq had ordered earlier for that purpose ("How White House Embraced Suspect Iraq Arms Intelligence," *New York Times,* Oct. 3, 2004, A1). And, as one DOE analyst later stated, if Iraq was really trying to make centrifuges out of these tubes, it would be so difficult that "we should just give them the tubes" (Senate Select Committee on Intelligence, "Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq," p. 84).

Despite the serious concerns of the nation's top nuclear experts about the aluminum tubes theory, President Bush, Vice President Cheney, Secretary Powell, and National Security Advisor Rice all used it as a key piece of evidence to argue to Congress, the American public, and our allies that we should go to war against Iraq. Dr. Rice even invoked the image of a mushroom cloud in her public statements (*New York Times, supra*).

Media and congressional accounts have reported a puzzling sequence of events regarding DOE's role in the debate over Iraq's nuclear capabilities. On September 13, 2002, the *New York Times* reported the dispute over Iraq's use of aluminum tubes in an article on a speech by President Bush at the United Nations in which he pointed specifically to Iraq's attempt to procure aluminum tubes as evidence of a reconstituted nuclear weapons program. In the September 13, 2002, article, an unidentified senior administration official dismissed the debate as a "footnote, not a split." Citing another unidentified administration official, the story also reported that the "best technical experts and nuclear scientists at [Dept. of Energy] laboratories like Oak Ridge supported the CIA assessments" ("Threats and Responses: Baghdad's Arsenal; White House Lists Iraq Steps to Build Banned Weapons," *New York Times*, Sept. 13, 2002, A13). Contrary to these characterizations, however, as a senior Oak Ridge official pointed out to the Senate Intelligence Committee in 2004, "the vast majority of scientists and nuclear experts" in the Energy Department's laboratories, in fact, disagreed with the agency. But on September 13, 2002, the day the *New York Times* article appeared, someone in the Energy Department reportedly sent a directive forbidding employees from discussing the subject with reporters" (Oct. 3, 2004, *New York Times*, *supra*).

Further, according to the *New York Times,* in meetings among the intelligence community representatives during the development of the October 2002 NIE, DOE's Acting Director of Intelligence, Thomas Ryder, said that while DOE still did not believe the aluminum tubes were for centrifuges, it could agree that Iraq was reconstituting its nuclear weapons capability based largely on reported Iraqi efforts to buy yellowcake uranium from Niger. The article noted that "[s]everal senior scientists inside the department said they were stunned by that stance; they saw no compelling evidence of a revived nuclear program" (*New York Times*, *supra*).

Mr. Ryder, who is currently deputy director of DOE's Office of Energy Assurance, had been in the position of acting director of the Office of Intelligence for only five months and did not appear to have significant experience in the intelligence community. Media accounts have reported that Mr. Ryder had overruled senior DOE intelligence officials in taking the position that Iraq was reconstituting its nuclear weapons program. They also reported that Mr. Ryder received substantial bonuses during the months leading up to the war in Iraq ("Operation: Iraqi Freedom; $20,000 Bonus to Official Who Agreed on Nuke Claim," WorldNetDaily, August 12, 2003).

National Intelligence Estimates are intended to be the most authoritative written judgments of the Intelligence community regarding the likely course of future events. They are to provide policymakers with the best, unvarnished and unbiased information, regardless of whether analytic judgments conform to U.S. policy. The October 2002 NIE and, in particular, its conclusions about the aluminum tubes, were heavily relied on by Congress when it authorized the President to go to war against Iraq. The CIA's evaluation of the purpose of the aluminum tubes was critical to the policy debate.

Now we know that the CIA's theory was not only wrong in retrospect, but that at the time the CIA was advancing its theory, top DOE nuclear experts had reached the opposite conclusion. The Senate Intelligence Committee concluded that the information available in October of 2002 "indicated that these tubes were intended to be used for an Iraqi conventional rocket program and not a nuclear program. . . . The Central Intelligence Agency's (CIA) initial reporting on its aluminum tube spin tests was, at a minimum, misleading and, in some cases, incorrect" (Senate Intelligence Report, *supra,* 131, 136). The Senate report also raised serious questions about what role the DOE Secretary's office played in advancing the Department's position on Iraq's nuclear program.

We request that GAO address the following questions on this matter:

1. Was the Secretary of Energy or anyone in his office aware of the conclusions of DOE's intelligence analysts that it was unlikely that Iraq was using the aluminum tubes to build centrifuges, and that these tubes had identical specification to other tubes used by Iraq in conventional rockets?

2. If so, were those conclusions transmitted to top Administration officials and to Congress as the nation debated whether it should go to war against Iraq based in large part on the belief that the aluminum tubes provided irrefutable evidence that Iraq was reconstituting its nuclear weapons program? When and how did DOE communicate the conclusions of its top nuclear experts about the aluminum tubes theory to officials in the White House and in other Administration agencies?

3. What role did senior energy officials play during the drafting of the nuclear section of the NIE of 2002 that the Administration used to make its case to Congress for war? Did the Secretary or any of his senior aides in any way influence or attempt to influence analytic conclusions of the Department's intelligence analysts or the presentation of their judgments?

4. On what basis was the DOE judgment – reportedly articulated by then DOE Acting Director of Intelligence Thomas Ryder – made that Iraq was reconstituting its nuclear weapons program? Was Mr. Ryder briefed by his own intelligence analysts before he presented that position? What involvement did the Secretary of Energy have in determining DOE's position on Iraq's nuclear capability during the development of the October 2002 NIE?

5. What were Mr. Ryder's qualifications to serve as director of the Office of Intelligence? Did he have any intelligence or nuclear weapons expertise? Why was he the DOE representative at the meeting or meetings during the development of the October 2002 NIE when normally such meetings are attended by intelligence analysts and experts?

6. When did Mr. Ryder leave the Office of Intelligence? Did he receive a bonus or bonuses while he was the acting director? If so, what was the amount of the bonus or bonuses, who authorized the bonus or bonuses, and when were any such bonuses received?

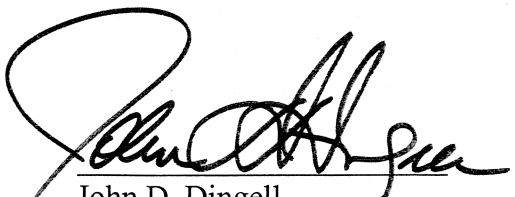
7. In 2002, a DOE employee chaired the Joint Atomic Energy Intelligence Committee (JAEIC), a secret body of nuclear experts which resolves disputes and provides assessments on nuclear intelligence. This committee assessed the Iraqi nuclear threat in 1989, 1997, and 1999. JAEIC was convened in August of 2002 to discuss the debate over the aluminum tubes, but no subsequent meetings were held and apparently no formal assessment was made. Who in DOE chaired JAEIC in 2002? Did JAEIC provide a final assessment of the Iraqi nuclear threat in 2002? If it did so, what was the conclusion? If not, why didn't JAEIC provide this assessment? Did anyone in the Department or the Administration direct that no further meetings of JAEIC be held on this subject?

8. Was there a September 13, 2002, DOE directive to employees forbidding discussion of the subject of the aluminum tubes theories with reporters? If so, what was the rationale for sending this directive?

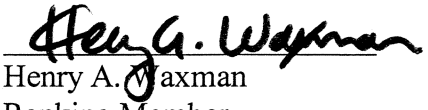
In the months leading up to the war in Iraq, the President, the Vice President, the Secretary of State, and the National Security Advisor made statements leading the nation to believe that Iraq was reconstituting its nuclear weapons program. According to the *New York Times*, these statements were made despite the Administration's knowledge of the serious objections to that position by top nuclear experts at the Energy Department. It is important to understand what happened and where the breakdown in communication from top officials at the Energy Department to Congress and the American people occurred.

If you have any questions about this request or require further clarification, please have your staff contact Edith Holleman, Committee on Energy and Commerce Democratic staff, at (202) 226-3400, Kristin Amerling, Committee on Government Reform Democratic staff, at (202) 225-5051, or Chani Wiggins in Representative Stupak's office at (202) 225-4735.

Sincerely,



John D. Dingell
Ranking Member
Committee on Energy and Commerce



Henry A. Waxman
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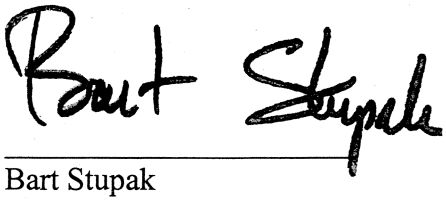
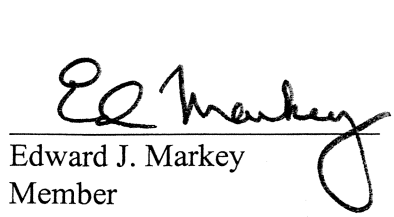
Committee on Government Reform



Bart Stupak
Member



Edward J. Markey
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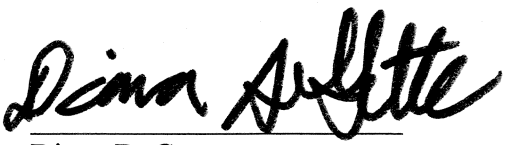

Diana DeGette
Member

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Tom Davis, Chairman
Committee on Government Reform