

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERTRAM SACKS,

Defendant.

NO. C10-534-RAJ

**DECLARATION OF BERTRAM  
SACKS**

STATE OF WASHINGTON       )  
  ) ss.  
COUNTY OF KING        )

Bertram Sacks hereby declares as follows:

1. I am over the age of eighteen, am competent to testify herein, and make this  
Declaration on my personal knowledge, unless otherwise stated.

DECLARATION OF BERTRAM SACKS - 1  
No. C10-534-RAJ

**CARNEY  
BADLEY  
SPELLMAN**

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1           2.     I wish to explain to the Court why I did not ask for a license to travel to Iraq to  
2 deliver medicine there; and why I refused to pay the fine of \$10,000 imposed on me by the  
3 U.S. Office of Foreign Assets Control (OFAC) for a trip in November, 1997.

4           3.     My major involvement with Iraq began in 1994, when I read a survey on  
5 health conditions of Iraqi children published in *The New England Journal of Medicine*  
6 (NEJM). That survey concluded: "These results provide strong evidence that the Gulf War  
7 and trade sanctions caused a threefold increase in mortality among Iraqi children under five  
8 years of age. We estimate that an excess of more than 46,900 children died between January  
9 and August 1991."

10          4.     Also in the NEJM, an April 1997 editorial explained: "Iraq is an even more  
11 disastrous example of *war against the public health*. ... The destruction of the country's  
12 power plants had brought its entire system of water purification and distribution to a halt,  
13 leading to epidemics of cholera, typhoid fever, and gastroenteritis, particularly among  
14 children. Mortality rates doubled or tripled among children admitted to hospitals in Baghdad  
15 and Basra. Cases of marasmus appeared for the first time in decades. The [survey] team  
16 observed 'suffering of tragic proportions.... [with children] dying of preventable diseases and  
17 starvation.' *Although the Allied bombing had caused few civilian casualties, the destruction*  
18 *of the infrastructure resulted in devastating long-term effects on health*" (emphasis added).

19          5.     On June 23, 1991, I read statements in *The Washington Post* by the Pentagon  
20 bombing planners explaining why they had destroyed Iraq's electrical plants. USAF Colonel  
21

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1 John Warden III was quoted as saying, "Saddam, when you agree to [our demands], we will  
2 allow people to come in and fix your electricity. It gives us long-term leverage." And another  
3 quote: "People say, 'You didn't know that it was going to have an effect on water and  
4 sewage,' said the planning officer. What were we trying to do with sanctions – help out the  
5 Iraqi people? No. What we were doing with the attacks on infrastructure was to accelerate  
6 the effect of the sanctions."

7 6. Weeks after the end of the Gulf War, on March 22, 1991, I read a *New York*  
8 *Times* front-page story covering the UN report by Martti Ahtisaari on the devastating, "near-  
9 apocalyptic conditions" in Iraq after the Gulf War. The report said, "famine and epidemic  
10 [were imminent] if massive life-supporting needs are not rapidly met. The long summer ... is  
11 weeks away. Time is short." The same article explained U.S. policy this way: "[B]y making  
12 life uncomfortable for the Iraqi people, [sanctions] will eventually encourage them to remove  
13 President Saddam Hussein from power." This sentence has stayed with me for twenty years.  
14 It says to me that my government – by inflicting suffering and death on Iraqi civilians –  
15 hoped to overthrow President Saddam Hussein, and that we would simply call it "making life  
16 uncomfortable."

17 7. A year before I made the trip to Iraq for which I was fined, I watched a 1996  
18 CBS *Sixty Minutes* segment reporting on their investigative trip to Iraq. After returning from  
19 Iraq, Leslie Stahl asked Madeleine Albright, then the U.S. Ambassador to the United Nations,  
20 about the deaths of 500,000 Iraqi children and asked, "is the price worth it?" On national  
21

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1 television, Madeleine Albright replied that "the price is worth it." She did not challenge that  
2 estimate of Iraqi children's deaths or that there was U.S. responsibility. The following year  
3 she was confirmed as U.S. Secretary of State.

4 8. Ten months before the 1997 trip to Iraq for which I was fined, I asked to meet  
5 with Katrina ("Kate") Pflaumer, then the United States Attorney for the Western District of  
6 Washington. We met in her office and I asked her for the legal definition of terrorism  
7 pursuant to the laws of the United States. The two main elements relevant to the issue here  
8 are: (1) it is an act dangerous to human life; and (2) done apparently to coerce or intimidate a  
9 civilian population or a government (*see* 18 U.S.C. § 2331).

10 9. Taken together, these public statements meant that (a) 195 Iraqi children were  
11 dying every day from polluted water; (b) to accelerate the effect of US/UN economic  
12 sanctions; (c) in order to coerce the Iraqis to overthrow President Saddam Hussein from  
13 power.

14 10. By January 1997, I had concluded that statements made by top U.S.  
15 government officials, actions taken by top U.S. military planners, and the lethal consequences  
16 as reported in our medical journals and media, together documented the crime of international  
17 terrorism as committed by the U.S. government against the civilian population of Iraq.

18 11. Since 1994, I have been seeking ways to be a responsible citizen of the  
19 country using a "war against the public health" of Iraq to coerce the overthrow of Saddam  
20 Hussein. In 1997, I led a delegation to Iraq (for which I was fined) and brought \$40,000  
21

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1 worth of donated medicine to the Archbishop of Basra. It went to help the Christians,  
2 Muslims and even the one Jew in his parish. But I knew that humanitarian aid could never  
3 solve the public health crisis in Iraq. I believed that if Americans knew what was really  
4 happening to Iraqi children, this atrocity would stop. Our delegation appeared on CNN in a  
5 4-minute segment – in an article in *The New York Times* – and the CBS Nightly News began  
6 with a clip in which I said, “Ms. Albright, you could do so much good, please end the  
7 economic sanctions on Iraq.”

8 12. It is speculation whether the media attention given to our protest of sanctions  
9 motivated OFAC to issue a pre-penalty notice to me in 1998 and eventually the fine in 2002  
10 of \$10,000 for “travel-related expenses” in Iraq. OFAC’s penalty, however, clearly could not  
11 be motivated by a sincere, consistent intention to prevent any money from reaching Iraq. In  
12 that same year of 2002, and in the previous two years, the Houston-based company Bayoil  
13 paid Saddam Hussein \$37 million in illegal kickbacks to purchase oil. When the UN notified  
14 OFAC and asked them to take action against Bayoil, OFAC did not. OFAC explained their  
15 failure to investigate or penalize Bayoil to Senator Carl Levin’s Congressional Subcommittee  
16 this way: OFAC said, “It was up to the U.N., not the U.S., to police compliance with  
17 sanctions.” See the summary of testimony before, and investigation by, Senator Levin’s  
18 “Permanent Subcommittee on Investigations on Iraqi Oil Allocations to Foreign Leaders”  
19 prepared by Kathy Kelly of the organization “Voices in the Wilderness” in her “Open Letter  
20 to Senator Carl Levin,” dated July 29, 2005, attached hereto as Exhibit A.

21  
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1           13.     Clearly this same belief, in this same year, did not apply to those protesting the  
2 sanctions (which involved sums of money a hundred thousand times smaller). Nonetheless,  
3 in part I welcomed the penalty: it would help bring the issue back into the court of public  
4 opinion – and eventually would bring the issue into that other important court, a U.S. court of  
5 law.

6           14.     I went to Washington, DC, to explain why I would not pay the \$10,000 fine. I  
7 rented a room in the National Press Building and held a news conference. As a result of the  
8 publicity surrounding my refusal to pay – which included a front-page story in *The Seattle*  
9 *Post-Intelligencer* newspaper (attached hereto as Exhibit B) – the law firm of Garvey  
10 Schubert Barer offered me *pro bono* legal advice. (In 2002, we filed a FOIA request with  
11 OFAC. Seven years later, OFAC finally replied by advising that for an estimated \$79,718.10  
12 to cover 1,650 hours of their labor, they would/could fill our request.) In 2004, we chose to  
13 sue OFAC over the fine in the United States District Court for the Western District of  
14 Washington in Seattle.

15           15.     Unexpectedly, at the end of oral argument, The Honorable James L. Robart  
16 invited me to address the Court. In my brief comments I said:

17                   I've been struggling for many years to find something that I could  
18 do that would help to be a responsible citizen of this country to stop  
19 this process which is clearly killing thousands of children every  
20 month. If it is in fact correct that the customary international law  
21 that applies in this case, the rights of the children, the Geneva  
Convention, the Genocide Convention, cannot be brought in front  
of a domestic Court because the President [or Congress] has  
standing to overrule those customary international law[s], then that

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1 issue puts me, and I think all the other citizens of the country, in a  
2 quandary. What can we do if we feel that some gross, terrible  
3 human rights violation is occurring under our government? And that  
4 to me is the central issue.

5 16. As I indicated in this statement, the most significant results for me concerned  
6 the international conventions I mentioned. The day after oral argument, Judge Robart ruled  
7 that OFAC had not exceeded its authority in fining me – and that the sanctions regime as  
8 constituted was legitimately authorized. His ruling on genocide, however, has had the  
9 greatest impact on me. At that stage in the legal proceedings, when he granted the  
10 Government's motion to dismiss our complaint, Judge Robart himself made clear that he was  
11 under a legal obligation: "In reviewing the allegations of the complaint, all material  
12 allegations [must be] accepted as true, as well as all reasonable inferences to be drawn from  
13 them."

14 17. The most serious material allegation Judge Robart noted that he had to accept  
15 as true was our claim that the deaths of 500,000 Iraqi children (as reported in a UNICEF  
16 survey to be discussed later) had come to constitute genocide. Judge Robart's ruling said this:  
17 "Although the United States has ratified part of the Convention on the Prevention and  
18 Punishment of the Crime of Genocide, it also provided that the Convention creates no  
19 'substantive or procedural right enforceable by law by any party in any proceeding.' (18  
20 U.S.C. §1092)."

21 18. This ruling – prohibiting any legal consideration of whether U.S. policy  
towards Iraq had come to constitute genocide – gets to the root of the quandary I spoke of in

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1 court. If Congress prohibits by law the bringing of any consideration of genocide into a legal  
2 proceeding, then it allows the U.S. government to commit this crime while barring any other  
3 party from raising the issue legally. Of all international crimes, genocide is widely held to be  
4 a *jus cogens* crime, a peremptory norm that no nation may legally derogate from under  
5 international law.

6 19. As mentioned in ¶ 17 above, Judge Robart noted that he had to accept as true  
7 that we could show the U.S. had committed genocide in Iraq. Nonetheless, he ruled, based on  
8 the “immunity” the Government had effectively created for itself, that it *did not matter*  
9 whether the U.S. had committed genocide against the Iraqi people. I found this to be a  
10 stunning and deeply troubling result.

11 20. I wish to provide more evidence supporting these elements of my belief: (1)  
12 regarding the publicly stated intention of the U.S. government to use conditions dangerous to  
13 human life to coerce the civilian population and/or government of Iraq; (2) additional public  
14 information regarding the means of coercion; and (3) the extent of the publicly known lethal  
15 consequences of the policy.

16 21. As to point (3), it is understandable that most people are unaware of the  
17 September, 1992 survey in *The New England Journal of Medicine* and the report of almost  
18 50,000 excess deaths of Iraqi children in only eight months. Using the Lexis-Nexus media  
19 database, I found only three of the top 50 newspapers in the country printed more than a very  
20 brief mention of the report. (They were not any of the major papers – except for *The New*  
21

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1 *York Times*, which did print an extensive article – but published it *only* in the Long Island  
2 edition as a local news story, because a doctor from Long Island had gone to Iraq to observe  
3 conditions.)

4 22. A month later, however, on October 29, 1991, the PBS TV program *Frontline*  
5 broadcast for American audiences an hour-long documentary titled *The War We Left Behind*.  
6 (I am providing, along with this Declaration, a DVD with 5 minutes of snippets from that  
7 program. I hope that the Court will look at it to see the evidence of what those on the ground  
8 knew was happening in 1991.) The commentator says, “A recent UN report on Iraq stated:  
9 ‘The ultimate threat is posed by the large quantities of sewage from upriver that flow  
10 untreated into the country’s two major rivers. Much of the population is now obliged to drink  
11 this untreated water, straight from the river.’ The threat is epidemics spreading untreated, out  
12 of control.”

13 23. So it is reasonable to believe that the Bush Administration knew by November  
14 1991 what was happening in Iraq, and that they knowingly continued the policy. Just months  
15 after the end of the Gulf War, on May 27, 1991, U.S. Secretary of State James Baker III told a  
16 Congressional subcommittee that “U.N. sanctions [will remain] in place so long as Saddam  
17 Hussein remains in power.” (This meant the U.S. would disregard the UN Security Council  
18 resolution which stated that U.N. sanctions would end once Iraq’s WMDs were destroyed;  
19 this statement also clearly removed the incentive Saddam Hussein had to disarm, showing  
20 that the Administration’s goal was regime change, not disarmament; and it also meant that  
21

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1 sanctions would continue indefinitely, preventing Iraq from selling oil to repair its destroyed  
2 civilian infrastructure – and Iraqi children would continue to die from unsafe water.)

3 24. UNICEF provided the next major study of children's mortality in Iraq.  
4 Results were publicized on August 12, 1999. The UNICEF news release announced: "if the  
5 substantial reduction in child mortality throughout Iraq during the 1980s had continued  
6 through the 1990s, there would have been half a million fewer deaths of children under-five  
7 in the country as a whole during the eight year period 1991 to 1998." (This is the report we  
8 cited in District Court with regard to our allegations that the U.S. had committed the crime of  
9 genocide against the Iraqi people.)

10 25. The survey population in *The New England Journal* study was 16,076  
11 children. The UNICEF study surveyed 40,000 households in all of Iraq. These large cohorts,  
12 randomly selected, assured low margins of error. But they did not assure much media  
13 attention in the U.S. Again, only two of the top 50 papers in the U.S. actually printed the key  
14 statistic of 500,000 dead Iraqi children. (Again, they were not the major papers. *The Wall*  
15 *Street Journal* covered the entire story in two sentences, omitting that statistic and blaming  
16 Saddam Hussein for all the deaths. Meanwhile, the three commercial networks were worse:  
17 when transcripts of those national news shows were checked during the 90 days following  
18 UNICEF's study release, they made *no mention at all* of UNICEF's report.)

19 26. There is little doubt that some 5,000 Iraqi children were dying every month  
20 *throughout* the sanctions period. The first two heads of the "Oil-for-Food" program – Denis  
21

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1 Halliday and Hans von Sponeck – each resigned a position as UN Assistant Secretary General  
2 to protest the consequences of the U.S. imposed sanctions policy on Iraq. Mr. Halliday said,  
3 “We are in the process of destroying an entire society. It is as simple and terrifying as that.”  
4 He called it genocide. Mr. von Sponeck also resigned in protest, saying that the amount of  
5 money allowed for all the needs of the Iraqi people was “woefully inadequate.” Over the  
6 entire program, from 1996 to 2003, the UN Oil-for-Food program averaged 52 cents a day  
7 per Iraqi for all the needs of the population: food, medicine, electricity, water, sanitation,  
8 health care, education, and on and on. (I have met both of these men a number of times. They  
9 each gave up 30-year UN careers to speak out against this sanctions policy. They are  
10 examples of the most honorable and decent public servants I have known.)

11 27. A final point regarding the mortality data on Iraqi children: the *NEJM* survey  
12 was available several months before Bill Clinton won his first presidential election in  
13 November, 1992, and the UNICEF survey was published near the end of his presidency. But  
14 his Administration surely had to know about the 1996 CBS’ *Sixty Minutes* program on Iraq  
15 referred to earlier.

16 28. Next, I wish to offer some further evidence regarding the means of coercion  
17 that knowingly led to these deaths. The U.S. Air Force destruction of Iraq’s electrical-  
18 generating plants brought down 96% of the country’s electrical-generating capacity right after  
19 the war. Ten years later, Professor Thomas Nagy discovered a previously classified  
20 document, newly released, with the subject line, “Iraq’s water treatment vulnerabilities.” It  
21

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1 was sent from CENTCOM on the *second day* of the Gulf War. Here are two of the 28 key  
2 judgments offered:

3 3. Failing to secure supplies will result in a shortage of pure  
4 drinking water for much of the population. This could lead  
to increased incidences, if not epidemics, of disease.

5 28. The entire Iraqi water treatment system will not collapse  
6 precipitously....full degradation of the water treatment  
system probably will take at least another 6 months.

7 29. Commenting on this CENTCOM document, the distinguished British  
8 journalist Robert Fisk wrote: "In other words, the United States and Britain and other  
9 members of the Security Council were well aware that the principal result of the bombing  
10 campaign – and of sanctions – would be the physical degradation and sickening and deaths of  
11 Iraqi civilians. Biological warfare might prove to be a better description. The ultimate nature  
12 of the 1991 Gulf War for Iraqi civilians now became clear. Bomb now: die later."

13 30. Regarding Robert Fisk's description of this policy as biological warfare, the  
14 Centers for Disease Control (CDC) publishes a listing of U.S. vulnerabilities to potential  
15 terrorist biological attacks on the United States. In its Category B list of vulnerabilities is  
16 this: "Water safety threats (such as *Vibrio cholerae* and *Cryptosporidium parvum*): Cholera is  
17 an acute bacterial disease characterized in its severe form by sudden onset, profuse painless  
18 watery stools, nausea and vomiting early in the course of illness, and, in untreated cases,  
19 rapid dehydration, acidosis, circulatory collapse, hypoglycemia in children, and renal failure.  
20 *Transmission occurs through ingestion of food or water contaminated directly or indirectly*  
21

DECLARATION OF BERTRAM SACKS – 12  
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1 with feces or vomitus of infected persons" (emphasis added). So, from multiple sources,  
2 Pentagon bombing planners could have known - and should have known - the consequences  
3 of destroying Iraq's ability to pump and process safe water and sewage.

4 31. Nonetheless, the person called the "architect" of the 1991 U.S. air war against  
5 Iraq, Colonel John Warden III, offered a lengthy explanation of the bombing strategy he  
6 employed. In a paper titled "The Enemy as a System," published in the USAF *Airpower*  
7 *Journal*, Spring 1995, Colonel Warden wrote, "As strategists and operational artists, we must  
8 rid ourselves of the idea that the central feature of war is the clash of military forces. In  
9 strategic war, a clash may well take place, but it is not always necessary, *should normally be*  
10 *avoided*, and is almost always a means to an end and not an end in itself" (emphasis added).  
11 Later, he continued, "All systems seem to require certain organic essentials .... For human  
12 beings, the essential inputs are food and oxygen." And yet further on, "Without electric  
13 power ... distribution of food and other essentials ... and life in general become difficult to  
14 impossible." The word "water" does not appear anywhere in the 8,000 words of Colonel  
15 Warden's paper on "organic essentials"; he does not mention safe water as an essential need  
16 of humans even when they live where temperatures reach 120 degrees Fahrenheit in summer.

17 32. Another USAF Colonel, Kenneth Rizer, was more forthcoming, however: his  
18 paper was entitled "Bombing Dual-Use Targets: Legal, Ethical, and Doctrinal Perspectives,"  
19 and was published in USAF *Air & Space Power Chronicles* in May 1, 2001. Col. Rizer wrote,  
20 "A key example of such dual-use targeting was the destruction of Iraqi electrical power  
21

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1 facilities in Desert Storm. While crippling Iraq's military command and control capability,  
2 destruction of these facilities shut down water purification and sewage treatment plants. As a  
3 result, epidemics of gastroenteritis, cholera, and typhoid broke out, leading to perhaps as  
4 many as 100,000 civilian deaths and a doubling of the infant mortality rate. Given such  
5 effects on non-combatants, are electrical power facilities legitimate military targets?" Seven  
6 thousand words later he concluded: "The US Air Force has a vested interest in attacking dual-  
7 use targets so long as dual-use target destruction serves the double role of destroying  
8 legitimate military capabilities *and indirectly targeting civilian morale*" (emphasis added).

9 33. There is no discussion in either of these papers of the requirement for the  
10 military to abide by the rules of war of proportionality and discrimination in weighing effects  
11 of actions on civilians. Colonel Rizer considered the death of 100,000 Iraqi civilians a  
12 *desirable* – not objectionable – goal of the U.S. Air Force. Colonel Warden wrote that a clash  
13 of military forces should "normally be avoided." He makes clear that attacking civilian  
14 "essential organics" is a smarter way to get what we want – except that this completely  
15 violates the Geneva Convention's prohibition against collective punishment and targeting  
16 civilians.

17 34. Finally, here are two small but revealing items of related information.

18 35. Remarkably, Madeleine Albright (in her memoirs, *Madame Secretary*) failed  
19 to see the implications of what she considered to be a justification for the U.S. policy she  
20 supported and implemented. She wrote: "Saddam Hussein could have prevented any child  
21

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1 from suffering simply by meeting his obligations....” Her statement means that if a party  
2 threatens to kill children to force another to meet obligations, the deaths are the responsibility,  
3 not of the one killing children, but of the one being coerced by the threat.

4 36. OFAC has never published any policy rules describing why they grant or deny  
5 licenses or how long the process should take. I know of a very credible organization applying  
6 for a license to bring humanitarian items to Iraq, only to receive a form letter two years later  
7 denying their request. They inquired why their request was denied and never received any  
8 answer. My own FOIA request to OFAC took over 6 months and a letter from my  
9 Congressman Jim McDermott to finally receive a substantive response. The information I  
10 received contained the dates of *some* of the license requests made to OFAC, but the column  
11 of information as to how long it took them to grant or deny the request was completely  
12 redacted. OFAC considered this “confidential information.” A third FOIA request to OFAC,  
13 specifically requesting information *only* about licenses for medicine for Iraq in the one year  
14 of 1993 has been acknowledged but unanswered since it was submitted on March 17, 2011.

15 37. I would be happy to address for the Court the many misrepresentations and  
16 falsehoods which have been used to deflect attention away from the reality of the U.S.  
17 sanctions policy on Iraq. For example: the claim that children were starving because Saddam  
18 Hussein built palaces [Madeleine Albright]; that Iraq never invested in its own infrastructure  
19 before our invasion [L. Paul Bremer]; that the 1991 Gulf War had *no* impact on the health of  
20 Iraqi children except to improve conditions in the North [the U.S. State Department]; finally,  
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DECLARATION OF BERTRAM SACKS – 15  
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1 that if Iraq had WMDs, then our 2003 war would have been legal (and not a UN Charter  
2 violation and therefore an illegal war), about which virtually all of the mass media was silent.

3 38. I have attached as Exhibit C an editorial by *The Seattle Times* from October 1,  
4 2000, "Iraq sanctions are a dead end" – supporting many of the factual points made in this  
5 Declaration. Attached as Exhibit D is an opinion column by Kate Pflaumer, the former U.S.  
6 Attorney for the Western District of Washington, published in the *Seattle Post-Intelligencer*  
7 on June 21, 2001. Ms. Pflaumer cited the Geneva Convention on the prohibition against  
8 destroying "objects indispensable to the survival of the civilian population," including  
9 "drinking water supplies..." She also cited the U.S. Code on international terrorism, stating  
10 the components of the legal definition noted earlier in this Declaration, followed by the  
11 statement, "That [Saddam Hussein] has collaborated in this terrorism does not reduce our  
12 responsibility for the bankruptcy of our policies to date."

13 39. There are many distinguished persons who have testified – or could testify – to  
14 the various facts and allegations of the crimes outlined here: they include two former United  
15 Nations Assistant Secretaries General; former and current U.S. Congress Members; a former  
16 U.S. Attorney; two former presidents of the American Public Health Association; doctors  
17 who wrote the survey and editorial in *The New England Journal of Medicine*; a number of  
18 respected law professors here and serving with the UN; doctors from Washington Physicians  
19 for Social Responsibility (WPSR) who have witnessed sanctions conditions; Nobel Peace  
20 Prize Laureates who went to Iraq, and who call the policy genocide, and say that "Sanctions  
21

DECLARATION OF BERTRAM SACKS – 16  
No. C10-534-RAJ

**CARNEY  
BADLEY  
SPELLMAN**

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A PROFESSIONAL SERVICE CORPORATION  
701 FIFTH AVENUE, SUITE 3600  
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1 are the economic nuclear bomb"; authors of articles in national magazines (on "Economic  
2 sanctions as a weapon of mass destruction" and "Were sanctions right? ... [Had] they killed  
3 500,000 innocent children"). Finally, this list includes a 32-year career, retired U.S. diplomat  
4 – Deputy Director of the Reagan White House Cabinet Task Force on Terrorism – who says:  
5 "you can think of a number of countries that have been involved in [terrorist] activities. Ours  
6 is one of them."

7 40. I try to understand and practice three key principles of nonviolence. The first  
8 is to seek and speak the truth as best I can (what Gandhi called "truth force"). The second is  
9 to distinguish between a bad or evil action and the persons committing the act, not thinking of  
10 them as bad or evil people (not to demonize). The third principle is that non-cooperation with  
11 evil is as much an obligation as cooperation with good (Gandhi). With all due respect for  
12 what I honor in our legal system – the presumption of innocence, the rules of evidence, the  
13 rule of law – what I've outlined here is beyond any reasonable doubt a crime and can also be  
14 called evil. (It is no less a crime even if I should be prevented from taking any action within  
15 a U.S. court of law.) Therefore, I am prohibited – morally and even legally – from  
16 cooperating by applying for a license to bring medicine to those in need and by paying a fine  
17 for having not done so.

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DECLARATION OF BERTRAM SACKS – 17  
No. C10-534-RAJ

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1 I hereby declare under penalty of perjury under the laws of the State of Washington  
2 that the foregoing is true and correct to the best of my knowledge.

3 Dated this 11<sup>th</sup> day of July, 2011.

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6 BERTRAM SACKS  
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DECLARATION OF BERTRAM SACKS - 18  
No. C10-534-RAJ

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## **EXHIBIT A**



*Published on Wednesday, June 28, 2005 by CommonDreams.org*

## **An Open Letter to Senator Carl Levin**

**by Kathy Kelly**

From: Kathy Kelly, Co-coordinator, [Voices in the Wilderness](#)

To: Senator Carl Levin, Chair, U. S. Permanent Subcommittee on Investigations on Iraqi Oil Allocations to Foreign Leaders

July 29, 2005

Dear Senator Levin,

Greetings from Geneva, Switzerland, where nine companions and I are on day 14 of a fifteen-day fast outside the U.N. We are urging the United Nations Compensation Commission to let compassion for Iraqi civilians guide their deliberations today and tomorrow, during which they'll determine how much of a 65 billion dollar outstanding debt Iraq should be required to pay for Saddam Hussein's 1990-91 war against Kuwait.

While here, some of us are preparing for a July 6, 2005 hearing in a D.C. federal court. We are charged with violating U.S. economic sanctions against Iraq. Lawyers will present additional oral argument, requested by the judge, as to whether or not we should pay a \$20,000 fine, imposed by the U.S. Office of Foreign Assets Control (OFAC) for bringing medicines to Iraqi children and families.

On May 17, 2005, testifying before the U.S. Senate, you demonstrated that the U.S. OFAC failed to enforce U.S. sanctions against U.S. oil companies accused of violating the economic sanctions against Iraq during the years 2000 - 2002. Using Iraqi internal records, your staff tracked deals made with the Iraqi regime in which oil companies paid illegal surcharges for their transactions, allowing the Iraqi regime to pocket the surcharge "under the table," beyond U.N. Security Council scrutiny. Your staff estimated that more than half of the money Iraq received in the form of surcharges was paid on oil sold to U.S. companies. Bayoil, headquartered in Houston, became the largest single buyer of Iraqi oil for the U.S. market, bringing in over 200 million barrels to the U.S.

Your report also described an incident in which seven massive oil tankers loaded with crude oil which the Iraqi regime sold to a Jordanian company were docked at Khor al-Amaya, in plain view of the Maritime Interdiction Force (MIF), which was then under U.S. command. According to an article in *The Guardian*, (May 16, 2005), investigators found correspondence showing that Odin Marine Inc, the U.S. company chartering the seven tankers which picked up the oil at Khor al-Amaya, repeatedly sought and received approval from U.S. military and civilian officials that U.S. Navy vessels in the MIF would not enforce the embargo by confiscating or stopping the ships.

A state department official reassured Odin that the U.S. "was aware of the shipments and has determined not to take action."

And, as you point out, the U.S. position on overland oil smuggling to Jordan and Turkey was outright approval. Jordan and Turkey, crucial U.S. allies, were quietly and informally exempted from the sanctions after complaining, in 1991, that the sanctions were harming their economy.

Joy Gordon, a scholar who has closely examined the history of economic sanctions against Iraq, quotes former Assistant Secretary of State Robert Pelletreau saying that the United States had decided "to close our eyes to leakage via Turkey." (Joy Gordon, The U.N. Is US, Harper's Magazine, December 2004)

Your Subcommittee asked the OFAC why it didn't do more to enforce the economic sanctions against major U.S. companies. The OFAC told your Subcommittee that it considered the Oil for Food program to be a U.N. responsibility, and that it was up to the U.N., not the U.S. to police compliance with sanctions. (The OFAC seems to have had a different point of view regarding humanitarian groups that traveled to Iraq.)

Senator Levin, I draw some hope from your May 17 testimony before the U.S. Senate. Clearly, you and your staff understand that those who ignore history are doomed to repeat it. You tackled a very complicated issue, examining voluminous records, and tried to better understand the OFAC's priorities as the U.S. government's primary enforcer of economic sanctions against Iraq.

You went after some of the relatively "big fish" in the pond of "sanctions-busters." But I think both you and the OFAC have overlooked the terrible monster in the pond, and the monster is striking again.

I'm one of the very little fish swimming in that pond. Voices in the Wilderness broke the sanctions at least 70 times and tried to be as open and public as possible about our actions. We brought donated medicines to children and families in Iraq, from 1996 - 2002. Immediately after we announced our campaign to U.S. Attorney General Janet Reno on June 15, 1996, OFAC notified us of the high penalties and prison terms that could be imposed on us if we persisted. We thanked them for the clarity of their warning, assured them we wouldn't be governed by cruel and unjust laws, and invited them to join us in our travel to Iraq.

In over twenty visits to Iraq, from 1996 - 2003, I saw first hand the horrible consequences of the economic sanctions. Saddam Hussein may not have missed a meal; arguably his control over the country was strengthened while the sanctions battered the civilian population. But Iraq's most vulnerable people, the elderly, the sick, the poor, and in a tragedy beyond words, hundreds of thousands of children, were brutally and lethally punished by sanctions. The 15-year economic siege devastated the economy, wrecked the infrastructure, prevented rehabilitating water purification systems, and debilitated health care systems. The economic sanctions were a monstrous crime against humanity, a silent weapon of ghastly, massive destruction.

The monster in the pool is the cool disregard for the unbearable and yet avoidable suffering that afflicted innocent Iraqi children.

Now, hundreds of thousands of Iraq's children again writhe in pain and sink into limp nausea, overcome by starvation and water-borne disease. Under a new Iraqi government and ongoing U.S. Occupation, these children fare no better than before.

You have supported appropriating billions of dollars of U.S. productivity toward force protection for U.S. armed forces and toward developing Iraqi armed forces. These measures reduce the funds that could be directed toward meeting essential needs of Iraqi families for potable water, reliable electricity, job creation and adequate food rations. In any country, basic security rests on access to these vital life supports. Iraq is no different.

Please, Senator Levin, let us agree that whether examining facts of the case against big fish or little fish, in terms of violating the sanctions, the monster in the pond was callous disregard for the survival of Iraq's children.

You could take an exemplary path-breaking stand and insist that U.S. foreign policy toward Iraq be guided, first and foremost, by compassion for Iraq's children. You could announce as the top priority in your future committee work a determination never again to repeat the disasters created by overlooking the effect of U.S. foreign policy decisions, regarding Iraq, on the children of Iraq. You could advocate enacting all necessary measures to secure the survival of the 7.7% of Iraqi children now suffering from acute malnourishment.

I'm urging you to take steps that would risk severe disapproval from the numerous groups that currently support ongoing funding for U.S. occupation of Iraq.

At least I can say that we're not asking you to make political sacrifices without ourselves undertaking some risks in our efforts to resist U.S. economic and military warfare against Iraq.

Should you or your staff be interested in further argument as to why we little fish believed there was a monster lurking in the pool, please join us as our case is argued in Judge Bates's courtroom next week.

Sincerely,

Kathy Kelly  
Co-Coordinator, [Voices in the Wilderness](#)  
[kathy@vitw.org](mailto:kathy@vitw.org)

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## **EXHIBIT B**





Published on Monday, June 17, 2002 in the Seattle Post Intelligencer

## **The U.S. vs. Bert Sacks' Principles on Iraq**

### **Seattle Man Won't Pay Fine for Taking Medicines There**

by Charles Pope

WASHINGTON -- Bert Sacks looks like he could be anybody's favorite grandfather.

Wafer-thin with unruly white hair, a gentle manner and soft spoken, the 60-year-old Seattle resident professes a love of children and a steely desire to live by principle.

Yet those two traits have brought federal prosecutors to his doorstep threatening to put him in jail for up to 12 years for aiding an enemy of the United States. Sacks, a retired engineer, admits it's a strange position for someone who embraces non-violence and it's why he has come to Washington, D.C.

Today is the deadline for Sacks to pay a \$10,000 fine for violating economic sanctions against Iraq. The violation is connected to a 1997 trip Sacks took to Iraq in which he has acknowledged taking \$40,000 worth of medicine.

While the government is pursuing him on that single event, Sacks has made eight trips to Iraq over the last six years, taking medicine, including antibiotics and vitamins, each time in an attempt to ease what he believes is untenable suffering for Iraqi children and to draw attention to what he claims are illegal sanctions.

He has accompanied and/or helped arrange trips to Iraq for several groups, including the Washington Physicians for Social Responsibility and Voices in the Wilderness, a Chicago-based organization.

Mild mannered as he is, Sacks is steadfast in his opposition to the sanctions that have been in place for 12 years. He refuses to pay the fine and is willing to face the consequences.

"We should speak in clear English," he says. "It's killing 5,000 children a month. It's not honest; it's not accurate to say it penalizes the Iraqi people. It kills them. I've been to Auschwitz. I'm Jewish. Nobody would say Auschwitz created hardships for the Jewish people. We need to be honest."

So Sacks and a rapidly growing number of supporters and other groups across the country continue to go to Iraq. And he has come to Washington with other activists in an attempt to persuade the government to rethink its position.

"It is very clear that U.S. policy of bombing civilian infrastructure and 11 years of sanctions is knowingly causing suffering and death, deliberately causing suffering and death of Iraqi civilians in order to coerce the government of Iraq. And that's wrong.

There is some part of me that has fear; that I can find myself in this situation by continuing to challenge my government. I can get thrown in jail for 12 years. There's another part of me that feels very good, that I'm finally walking a certain walk.

**Bert Sacks**



"If you're doing something very wrong ... you need to stop doing what's wrong. So we need to stop the economic sanctions and let the country rebuild," Sacks says.

A spokesman for the Treasury Department's Office of Foreign Assets Control, which is responsible for enforcing the economic provisions, refused to comment about Sacks' case. But he reiterated the U.S. government's determination to maintain the sanctions.

Sacks' mission is one that few in America have noticed. Polls show a combination of indifference for foreign affairs and support for toppling Iraqi leader Saddam Hussein. The desire to depose Saddam has grown strong since the Sept. 11 attacks.

Sacks, however, presses on, sustained by the belief that if American people understood what the sanctions were doing in Iraq there would be strong public pressure to change the policy.

"If that truth gets out, then there's a chance for change," he says.

And along with trying to educate the public, Sacks goes to Iraq to help -- in a small way -- relieve the suffering of children.

The sanctions, combined with destruction of Iraq's water systems, electrical grid and other infrastructure during the Gulf War, causes more than 5,000 children to die each month, Sacks says in explaining why he is risking jail.

"I go to Iraq; I've been warned, and I keep doing it because kids keep dying. We can't figure out what better to do. There's no better course," he said.

"We've put into place a policy that we know is deadly. We're doing it to coerce, and that's a crime even on our books."

Sacks doesn't object to all sanctions. He says he supports a military embargo of Iraq and even economic sanctions if they are carefully crafted. But the current sanctions, he says, are not achieving the goal of destabilizing Saddam or stopping the development of weapons of mass destruction.

"People who put the policies in place say we're being tough on Saddam. It's not true. We're killing children," he says. "They are keeping medicine out of the hands of people and if I were to go request permission from a law that I view is immoral and illegal, then I'm complicit in the crime. And this is a crime."

Despite Sacks' persistence, the sanctions aren't likely to end soon.

The United States remains firmly committed to the blockade, believing that sanctions are the best way to force political change in Iraq. That position has held strong through three presidents.

The United Nations imposed the economic sanctions on Iraq on Aug. 6, 1990, in response to Iraq's invasion of Kuwait.

The United States government also has imposed sanctions on Iraq. Under those sanctions, it is illegal to take any aid into Iraq without government approval, a violation punishable by stiff fines and jail time.

The U.S. government says the sanctions must remain in place until Iraq has proven that it has given up its weapons of mass destruction. Other countries, including France, Russia and China,

oppose the sanctions.

U.S. officials say Iraq's refusal to comply is to blame for the country's economic collapse, which has degraded health and education in Iraq and left many of its citizens dependent on U.N. food rations.

However, U.S. officials agree that some changes are needed to help relieve suffering of Iraqi citizens. Last month, for example, the U.S. agreed to a proposal by the U.N. Security Council to loosen the embargo to allow Iraq to trade oil for food and medicine.

The resolution adopted by the council extended the U.N. oil-for-food program for 180 days -- until Nov. 25. The resolution allows the free flow of most civilian goods into Iraq while simultaneously using a 332-page checklist to address concerns by the United States and other council members that Iraq diverts civilian goods to military use.

Critics say that the sanctions have crippled Iraq's people while doing nothing to weaken Saddam's power. They cite a 1999 report by the United Nations Children's Fund that the sanctions caused the deaths of as many as 500,000 Iraqi children under age 5 from 1991 to 1998.

They also cite a study by the Harvard University School of Public Health: Two months after the war, representatives from the school found that the destruction of the country's power plants had halted its entire system of water purification and distribution, leading to epidemics of cholera and typhoid fever, among other diseases.

Sacks admits he isn't sure what will happen with his case, though he is certain that the American government will one day realize the sanctions must be changed.

"There is some part of me that has fear; that I can find myself in this situation by continuing to challenge my government," he said. "I can get thrown in jail for 12 years.

"There's another part of me that feels very good, that I'm finally walking a certain walk."

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## **EXHIBIT C**

Editorials & Opinion: Sunday, October 01, 2000

Editorial

## **Iraqi sanctions are a dead end**

Imagine if a U.S. cruise missile were to land on a kindergarten and kill 165 children. Imagine now that it was launched knowing it would hit that kindergarten, and further, that one of these missiles was launched at a different kindergarten every day for a month. That's 5,000 children.

To kill that many children as a matter of state policy would be unspeakable. The American commander in chief would be condemned as a barbarian. And yet, that is what the economic embargo of Iraq has done: According to the United Nations International Children's Emergency Fund (UNICEF), the embargo has caused 5,000 extra deaths per month among children under 5. This has gone on for nearly 10 years, killing more than half a million children. These deaths were caused not by bombs but by germs, mainly preventable water-borne diseases such as typhoid and dysentery. They were caused because the United States and its allies wrecked Iraq's water-purification plants in 1991 and because the U.S.-led embargo on Iraqi oil has prevented Iraq from rebuilding them.

Water systems were not likely to matter much in a 100-hour war, or even a six-month war. They were targeted for long-term leverage. The justification was to put pressure on Saddam Hussein. Whatever deaths resulted from the policy could be blamed on Saddam. If the policy worked quickly, one could argue it was a success. But when the policy goes on and on, causing deaths of children with no end in sight, it becomes unconscionable.

Americans like to say the economic embargo is the policy of the United Nations. But the UN's General Assembly, if given a chance, would repeal it. So would the Security Council, where the embargo is sustained only by the United States and Britain. If President Clinton decided otherwise, the embargo would end tomorrow.

Americans also keep this policy going by disingenuously misidentifying the target. Government officials speak of the squeeze on Iraq in terms of a campaign against one man. Officials do not say that we bomb the people of Iraq; we are "hitting back at Saddam Hussein." They do not say we embargo the people of Iraq; we are "putting the squeeze on Saddam Hussein." And yet, the price is not paid by Saddam Hussein, personally, but by children who die and their families.

What has been gained? The goal was to prevent Iraq from developing weapons of mass destruction. American officials also hoped it might lead to the downfall of Saddam. Today, it is not clear that such weapons exist or that Saddam retains any ability to manufacture them. Within Iraq, it's likely the sanctions have strengthened, not weakened, Saddam's grip on power.

Despite all that, the United States continues to enforce an economic embargo that kills 5,000 children per month. After 10 years, it's time for Americans to take notice and name the policy for what it is: a tragic failure.

## **EXHIBIT D**



Published in the **Seattle Post-Intelligencer**  
June 21, 2001

**P-I is wrong on Iraqi sanctions**  
by Kate Pflaumer, Attorney\*



One of the Post-Intelligencer's June 14 editorial conclusions on the Iraqi sanctions is well-supported: The present "oil-for-food" sanctions are not working.

Unfortunately, you do not ask the important next question: Will the revised sanctions program proposed by Great Britain offer real amelioration of the civilian suffering in Iraq?

In the expert opinions of those who have administered or studied the United Nations' programs, the proposed revisions are not the new approach that is sorely needed. Rather, they would merely tinker ineffectually with a failed and terribly costly mechanism. [To quote The Economist, "the new British proposal is an aspirin where surgery is called for."]\*\*

The reality on the ground in Iraq is not contested. Thousands of innocent children and adult civilians die every month as a direct result of the 1991 bombing of civilian infrastructure: sewage treatment plants, electrical generating plants, water purification facilities. Allied bombing targets included eight multipurpose dams, repeatedly hit, which simultaneously wrecked flood control, municipal and industrial water storage, irrigation and hydroelectric power. [Four of seven major pumping stations were destroyed, as were 31 municipal water and sewerage facilities. Water purification plants were incapacitated throughout Iraq. We did this for "long term leverage." These military decisions were sanctioned by then Secretary of Defense Dick Cheney.]

In May 1996, Secretary of State Madeleine Albright reaffirmed that the "price" of 500,000 dead Iraqi children was "worth it."

...

Article 54 of the Geneva Convention states: "It is prohibited to attack, destroy or render useless objects indispensable to the survival of the civilian population" and includes foodstuffs, livestock and "drinking water supplies and irrigation works."

Title 18 U.S. Code Section 2331 defines international terrorism as acts dangerous to human life that would violate our criminal laws if done in the United States when those acts are intended to intimidate or coerce a civilian population or to influence the policy of a government by intimidation or coercion.

We prosecuted Timothy McVeigh for blowing up a civilian "target" to strike at the federal government and were appalled by his description of the resulting deaths as "collateral damage." Yet our own destruction of the means for Iraqis to obtain clean drinking water and medical treatment is described as a legitimate, if painful, way to strike at Saddam Hussein. That he has collaborated in this terrorism does not reduce our responsibility for the bankruptcy of our policies to date.

Even if we could set aside the law and the humanitarian crisis, our campaign has been a failure in political terms. Saddam continues in power as his people suffer and the United States is effectively blamed throughout much of the world for their privations. Changes in the way cumbersome lists work to allow more civilian goods into Iraq will not change that perception. Our response, the so-called "food-for-oil" program, has been a stunning failure.

Denis Halliday, the original administrator of the program, gave up a 34-year career when he resigned. He describes the program as keeping many Iraqi people alive in "famine conditions." He has candidly called it genocide because "it is an intentional program to destroy a culture, a people, a country."....

....

Kate Pflaumer is former U.S. attorney for the Western District of Washington. \* From 1993 to 2001, Kate Pflaumer was in charge of an office of 53 attorneys, as the chief U.S. federal attorney for the region of Western Washington. \*\* The sentences in brackets were in the op-ed submitted to the paper, but were edited out by the P-I for reasons of space.[http://seattlep-i.nwsources.com/opinion/28289\\_kateop.shtml](http://seattlep-i.nwsources.com/opinion/28289_kateop.shtml) © 1998-2001 Seattle P-I