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109TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 109–225

DIRECTING THE SECRETARY OF STATE TO TRANSMIT TO THE HOUSE OF REPRESENTATIVES NOT LATER THAN 14 DAYS AFTER THE DATE OF THE ADOPTION OF THIS RESOLUTION DOCUMENTS IN THE POSSESSION OF THE SECRETARY OF STATE RELATING TO THE DISCLOSURE OF THE IDENTITY AND EMPLOYMENT OF MS. VALERIE PLAME

SEPTEMBER 16, 2005.—Referred to the House Calendar and ordered to be printed

Mr. HYDE, from the Committee on International Relations, submitted the following

ADVERSE REPORT

together with

DISSENTING VIEWS

[To accompany H. Res. 419]

The Committee on International Relations, to whom was referred the resolution (H. Res. 419) directing the Secretary of State to transmit to the House of Representatives not later than 14 days after the date of the adoption of this resolution documents in the possession of the Secretary of State relating to the disclosure of the identity and employment of Ms. Valerie Plame, having considered the same, reports unfavorably thereon without amendment and recommends that the resolution not be agreed to.

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39–006

PURPOSE AND SUMMARY

House Resolution 419 directs the Secretary of State to transmit to the House of Representatives not later than 14 days after the date of the adoption of this resolution documents in the possession of the Secretary of State relating to the disclosure of the identity and employment of Ms. Valerie Plame.

BACKGROUND AND NEED FOR THE LEGISLATION

House Resolution 419 is a resolution of inquiry, which pursuant to Rule XIII, clause 7 of the Rules of the House of Representatives, directs the Committee to act on the resolution within 14 legislative days, or a privileged motion to discharge the Committee is in order. H. Res. 419 was introduced and referred to the Committee on International Relations on July 29, 2005, and was ordered reported adversely by the Committee on September 14, 2005.

Under the rules and precedents of the House, a resolution of inquiry is one of the methods used by the House to obtain information from the executive branch. According to Deschler's Procedure it is a "simple resolution making a direct request or demand of the President or the head of an executive department to furnish the House of Representatives with specific factual information in the possession of the executive branch." [1]

On July 29, 2005, Rep. Rush Holt of New Jersey introduced H. Res. 419. The resolution sought all documents, including telephone and electronic mail records, logs and calendars, personnel records, and records of internal discussions in the possession of the Secretary of State relating to the disclosure of the identity of Ms. Plame as an employee of the Central Intelligence Agency during the period beginning on May 6, 2003, and ending on July 31, 2003.

In February 2004, the House Committees on Intelligence, Armed Services, the Judiciary, and International Relations each reported adversely to the House a similar resolution, H. Res. 499.[2] Like H. Res. 499, H. Res. 419 would direct executive branch officials to transmit documents to the House of Representatives that are the subject of an ongoing criminal investigation. In light of this, the Committee voted to report the resolution of inquiry adversely.

The Department of Justice opened a criminal investigation in September 2003 into whether government officials who allegedly identified Valerie Plame to the press violated Federal law that prohibits identifying covert agents. Press reports indicate that the FBI investigation includes the White House, the Departments of State and Defense, and the Central Intelligence Agency and that "boxloads" of documents have been forwarded to the FBI investigation team-including White House phone logs and e-mails.[3] Law enforcement officials have been quoted indicating that the dozen agents assigned to the case have not encountered any stalling tactics.[4]

In December 2003, the then-Attorney General, John Ashcroft, recused himself from the investigation and the then-Deputy Attor-

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[1] Deschler's Precedents, H. Doc. No. 94–661, 94th Cong., 2d Sess., vol. 7, ch. 24, section 8.
[2] H. Res. 499, 108th Cong. (Jan. 21, 2004).
[3] Charlie Savage, *Ashcroft Steps Aside in Probe into CIA Leak*, THE BOSTON GLOBE, P. A12 (Dec. 31, 2003).
[4] Tom Brune, *Probe of Spy's Outing Nearly Done*, NEWSDAY p. A23 (April 6, 2005).

ney General appointed United States Attorney Patrick Fitzgerald to lead the investigation as special prosecutor.[5] Mr. Fitzgerald is a veteran prosecutor with experience in national security matters and enjoys a stellar reputation. Mr. Fitzgerald, according to press reports, has been granted more independence than the norm under Department of Justice Regulations.[6] For instance, Mr. Fitzgerald, unlike other U.S. Attorneys, reportedly does not have to seek approval from Department of Justice officials in Washington, DC before issuing subpoenas or granting immunity.

The press further reports that, in January 2004, a grand jury convened in Washington, DC to hear testimony on the Valerie Plame matter.[7] The grand jury has broad authority that allows investigators to subpoena witnesses and documents, including the same documents requested in H. Res. 419.

By all reports, Mr. Fitzgerald is pursuing the investigation into the Valerie Plame matter aggressively and responsibly. The Committee concluded that it would be unwise to allow H. Res. 419 to jeopardize an ongoing criminal investigation by the Department of Justice.

Under current circumstances, the International Relations Committee believes that congressional oversight of the protection of the identities of our intelligence agents under the Intelligence Identities Protection Act of 1982 is best left to the House Permanent Select Committee on Intelligence (HPSCI), the Committee of primary jurisdiction.

Because H. Res. 499 could impede an ongoing criminal investigation and the HPSCI is conducting oversight of this matter in its capacity as Committee of primary jurisdiction, the Committee ordered it reported adversely.

HEARINGS

The Committee did not hold hearings on H. Res. 419.

COMMITTEE CONSIDERATION

On September 14, 2005, the Full Committee marked up H. Res. 419, pursuant to notice, in open session. The Committee agreed to a motion to report the resolution adversely to the House by a record vote of 26 ayes to 21 nays.

VOTE OF THE COMMITTEE

Clause (3)(b) of rule XIII of the Rules of the House of Representatives requires that the results of each record vote on an amendment or motion to report, together with the names of those voting for or against, be printed in the Committee report. The following record vote occurred during consideration of H. Res. 419:

Vote to report to the House adversely:

Voting yes: Hyde, Leach, Smith (NJ), Burton, Gallegly, Ros-Lehtinen, Rohrabacher, King, Chabot, Tancredo, Paul, Issa, Flake, Davis, Green, Weller, Pence, McCotter, Harris, Wilson, Boozman, Barrett, Mack, Fortenberry, McCaul, and Poe.

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[5] *See* Savage, *supra* note 4.

[6] Cam Simpson, *Ashcroft Removes Self from Leak Probe; Fitzgerald to Lead the Investigation*, CHICAGO TRIBUNE, p. C1 (Dec. 31, 2003).

[7] *See* Brune *supra* n. 5.

Voting no: Lantos, Berman, Ackerman, Menendez, Brown, Sherman, Wexler, Engel, Delahunt, Meeks, Lee, Crowley, Blumenauer, Berkley, Napolitano, Schiff, Watson, Smith (WA), McCollum, Chandler and Cardoza.

H. Res. 419 was ordered reported adversely to the House by a vote of 26 ayes to 21 noes.

COMMITTEE OVERSIGHT FINDINGS

The Committee held no oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because H. Res. 419 does not provide new budgetary authority or increased tax expenditures.

PERFORMANCE GOALS AND OBJECTIVES

The rule requiring a statement of performance goals and objectives is inapplicable.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this resolution in article I, section 1 of the Constitution.

NEW ADVISORY COMMITTEES

H. Res. 419 does not establish or authorize any new advisory committees.

CONGRESSIONAL ACCOUNTABILITY ACT

H. Res. 419 does not apply to the legislative branch.

FEDERAL MANDATES

H. Res. 419 provides no Federal mandates.

DISSENTING VIEWS

The intentional disclosure of the identity of a U.S. covert intelligence agent, for whatever purpose, increases the risk to the lives of the brave men and women who risk their lives in the clandestine service to protect this nation from foreign threats. It also poses a grave threat to the national security of the nation because it will create doubt in the mind of foreign sources who could provide vital intelligence to our undercover operatives that their identity will be protected; if the identity of the U.S. agent can be disclosed for crude political purposes, then any meetings they may have had, and been observed to have, with that agent exposes those sources to retaliation by the foreign government. What if that foreign source has inside information about a pending terrorist attack on the United States, but decides against sharing that information with an undercover U.S. operative for fear that the terrorist group could kill him or his family? This is the true cost of the Administration's actions; we may not learn about another 9/11 in time to prevent it.

In the consideration of H. Res. 419, the International Relations Committee had a choice on how to address this despicable act and national security threat. We could have assumed the responsibility of oversight of the Executive Branch in areas of intelligence that affect U.S. foreign policy, as the rules of the House charge us. We could have demonstrated to the country and to the rest of the world that we would not countenance this blatantly political act by this or any White House. We could have demonstrated our resolve to investigate this fully and expose those responsible for it, and perhaps provided some reassurance to our brave intelligence agents and their sources that we will protect them. We could have at least asserted oversight over the State Department papers that may have inadvertently provided the source for subsequent White House officials' disclosures, something that is clearly within this Committee's jurisdiction. Instead, the Committee Majority chose to simply step aside and acquiesce to the evident wishes of the Administration. The Majority simply decided to trust the Administration to investigate itself, to wait out an investigation that shows no sign of ending or bringing any culpable person to justice.

The Majority of the Committee has again let down our intelligence community and all Americans that are still astonished by the perfidy of the exposure of our undercover agent for political purposes.

It has been over two years since the American people learned that a White House official exposed the identity of a CIA undercover operative to the media, perhaps calling six separate journalists with the information. One of these journalists—a conservative commentator who alone among the six chose to put personal publicity above national security—published the agent's identity in a

column ostensibly about the charges leveled by her husband, former Ambassador Joseph Wilson, that the Administration's claim that Iraq had sought to buy uranium from Niger was false and misleading. This journalist wrote in his column that he was told by the White House officials that the Ambassador's wife was "an operative" of the CIA, presumably intending to cast doubt about the Ambassador's motivations; other journalists were apparently told this was the "real story" and that Wilson's wife was "fair game."

As events have borne out, Ambassador Wilson was correct. The claims made by the President and others in his Administration that Iraq had purchased uranium from Niger were indeed false. Indeed, clearly and evidently false, based on badly-forged documents that even a cursory investigation would ascertain. According to press reports, our own intelligence agencies had grave doubts about their authenticity as early as the summer of 2002. Nevertheless, the President and his Administration used it as a vital piece of evidence that Iraq was reconstituting its nuclear weapons program. Even after senior intelligence officials insisted the claim be deleted from the President's speeches, the claim continued to surface in statements by senior Administration officials. The Secretary of State, in his presentation before the United Nations Security Council in February 2003, wisely refused to repeat the claim, recognizing its dubious character.

Administration officials have since admitted that the Iraq-Niger uranium claims were unsupportable—admitting this fact only reluctantly and in a raft of finger-pointing. And yet, someone in the White House could apparently not resist the temptation to tarnish the reputation of the one man who had actually, personally investigated the claim and who quietly told the Administration that the charges were false. When he was not heeded, he rightfully stated his opinions and information, openly and for the public record, in The New York Times in June 2003.

We find it extremely hard to believe that the disclosure of the CIA agent's identity by White House officials was inadvertent. One crucial fact has recently come to light; in June 2003, Secretary of State Powell had a top-secret State memorandum (prepared by the Department's Bureau of Intelligence and Research) with him regarding the Wilson mission during the President's trip to Africa. This memorandum reportedly had a section identifying Wilson's wife as a CIA operative, and several White House senior aides may have reviewed that memo, which could have been the source of their knowledge of Ms. Plame's identity. If so, they knew that information was classified. How could anyone in the White House therefore believe that this public revelation was not criminal or dangerous? Rather, we believe that the leaking of Ms. Plame's identity as a covert operative was clearly an intentional effort to discredit her husband's public charges of the Administration's misuse of intelligence, conducted to exact political vengeance and perform damage control. If we are correct, this was the ultimate "dirty trick" by an Administration to silence its critics.

It is true that this matter is already being investigated by a special prosecutor, whom we do not intend to demean. We note, however, that the only person to have suffered imprisonment in this

matter is a journalist who refused to reveal her sources, even though she never even wrote a story.

It is imperative that Congress fulfill its own oversight function in the investigation of this serious matter. U.S. Attorney Fitzgerald and the grand jury that is investigating this issue may find that while there has been wrongdoing, the legal elements of the federal criminal statutes involved here have not been met, and no indictment may be handed down. In that eventuality, he has no duty to report to Congress on his findings. And the fact that there may not be, in the course of this investigation, enough evidence to charge a federal crime does not mean that our national security is unaffected. Indeed, we need to ferret out how such an act, even if unintentional, could happen and establish safeguards to ensure that it never happens again.

This resolution of inquiry does not ask for Mr. Fitzgerald's or the Justice Department's internal investigatory documents or in any way impair grand jury secrecy; it demands instead the primary materials that would allow Congress and this Committee to conduct its own investigation. Indeed, as we prepare for any investigation that is deemed necessary, these documents can be kept in complete security and confidentiality and need not undermine Mr. Fitzgerald's efforts. We would remind our colleagues that even in this Administration there have been congressional inquiries conducted while the U.S. Government had a criminal investigation open. Just to cite one case, in the last Congress both the House and the Senate conducted an investigation of the Enron scandal with multiple hearings and the subpoena of Justice Department targets, including calling all the major corporate officers who have been subject to plea agreements and indictments or remain targets of the investigation. Allegations of insider trading involving Martha Stewart were also investigated by Congressional committees during the course of a criminal investigation. Of course, in the last Administration there were numerous congressional investigations of matters under criminal investigation (including some where grand juries were active). These investigations include those of the Waco Incident, the U.S. technology transfers to China, allegations of campaign finance violations, the White House Travel office and many others. And at this very moment, the Committee on International Relations is investigating the U.N. Oil-for-Food scandal at the same time that criminal investigations are taking place on the very same issue.

Moreover, it is a fact that the Executive Branch is investigating itself on what may turn out to be, at least in part, a political act. Congress must conduct oversight as it has repeatedly in the last ten years, and may need to charter an independent investigation. We regret that the House Majority has, time and time again, refused to conduct real oversight if the results may be discomfiting to this White House. This is not what the American people expect from their Congress, regardless who is in charge.

We regret that some choose to see this effort at seeking the truth as merely a political gambit; that has always been their defense when faced with effective and legitimate criticism. Last year, ten former CIA case officers and analysts, some of whom are known to us and are generally sympathetic to this Administration, wrote to

the Speaker of the House and stated "[f]or the good of the country, we ask you to please stand up for every man and woman who works for the U.S. intelligence community by immediately launching a congressional investigation." We endorse this plea wholeheartedly, and regret that the majority of this Committee chose not to hear it.

TOM LANTOS.
HOWARD L. BERMAN.
GARY L. ACKERMAN.
DONALD M. PAYNE.
ROBERT MENENDEZ.
SHERROD BROWN.
BRAD SHERMAN.
ROBERT WEXLER.
ELIOT L. ENGEL.
WILLIAM D. DELAHUNT.
GREGORY W. MEEKS.
BARBARA LEE.
JOSEPH CROWLEY.
EARL BLUMENAUER.
SHELLEY BERKLEY.
GRACE F. NAPOLITANO.
ADAM B. SCHIFF.
DIANE E. WATSON.
ADAM SMITH.
BETTY MCCOLLUM.
BEN CHANDLER.
DENNIS A. CARDOZA.

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