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108TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPT. 108–413, Part 2

REQUESTING THE PRESIDENT AND DIRECTING THE SECRETARY OF STATE, THE SECRETARY OF DEFENSE, AND THE ATTORNEY GENERAL 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 PRESIDENT AND THOSE OFFICIALS RELATING TO THE DISCLOSURE OF THE IDENTITY AND EMPLOYMENT OF MS. VALERIE PLAME

FEBRUARY 27, 2004.—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. 499]

The Committee on International Relations, to whom was referred the resolution (H. Res. 499) requesting the President and directing the Secretary of State, the Secretary of Defense, and the Attorney General 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 President and those officials relating to the disclosure of the identity and employment of Ms. Valerie Plame, having considered the same, report unfavorably thereon without amendment and recommend that resolution not be agreed to.

TABLE OF CONTENTS

	Page
Purpose and Summary	2
Background and Need for the Legislation	2
Hearings	3
Committee Consideration	3
Vote of the Committee	3
Committee Oversight Findings	4
New Budget Authority and Tax Expenditures	4
Performance Goals and Objectives	4
Constitutional Authority Statement	4
New Advisory Committees	4
Congressional Accountability Act	4
Federal Mandates	4

92–223

Dissenting Views 5

PURPOSE AND SUMMARY

House Resolution 499 requests the President and directs the Secretary of State, the Secretary of Defense, and the Attorney General to transmit to the House of Representatives not later than 14 days after the date of the adoption of this resolution documents, including telephone and electronic mail records, logs and calendars, personnel records, and records of internal discussions, in the possession of the President and those officials relating to the disclosure of the identity and employment of Ms. Valerie Plame during the period beginning on May 6, 2003, and ending July 31, 2003.

BACKGROUND AND NEED FOR THE LEGISLATION

House Resolution 499 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. 499 was introduced and referred to the Committee on International Relations, among others, on January 21, 2004, and was ordered reported adversely by the Committee on February 25, 2004.

Under the rules and precedents of the House, a resolution of inquiry is the means by which the House requests information from the President of the United States or the head of one of the executive departments. According to "Deschler's Precedents" 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."

On January 21, 2004, Mr. Holt of New Jersey introduced H. Res. 499, a resolution of inquiry requesting the President and directing the Secretary of State, the Secretary of Defense, and the Attorney General to transmit to the House of Representatives the documents, including telephone and electronic mail records, logs and calendars, personnel records, and records of internal discussions, in the possession of the President and those officials relating to the disclosure of the identity and employment of Ms. Valerie Plame as an employee of the Central Intelligence Agency during the period beginning on May 6, 2003, and ending July 31, 2003.

H. Res. 499 would direct Executive Branch officials to transmit to the House of Representatives documents that are the subject of an ongoing criminal investigation. In light of this, the Committee voted to report the resolution of inquiry adversely on the grounds that a criminal investigation is ongoing.

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. Law enforcement officials have been quoted indicating that the dozen

agents assigned to the case have not encountered any stalling tactics.

In December 2003, the Attorney General recused himself from the investigation and the Deputy Attorney General appointed United States Attorney Patrick Fitzgerald to lead the investigation as special prosecutor. Mr. Fitzgerald, according to press reports, has been granted more independence than the norm under Department of Justice Regulations. 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.

Mr. Fitzgerald is a veteran prosecutor with experience in national security matters and, as reported widely in the press, enjoys a stellar reputation.

The press reports that in January 2004 a grand jury convened in Washington, DC to hear testimony on the Valerie Plame matter. The grand jury has broad authority that allows investigators to subpoena witnesses and documents, including the same documents requested in H. Res. 499.

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. 499 to jeopardize an ongoing criminal investigation by the Department of Justice.

Of equal importance to deliberations of the Committee was the action taken by the House Permanent Select Committee on Intelligence (NPSCI), the Committee of primary jurisdiction over the subject matter of H. Res. 499. In a bipartisan vote, the Intelligence Committee voted to report the resolution adversely. The Chairman of the Intelligence Committee has publicly committed that Committee to continue to monitor and conduct oversight of this matter. The Committee concluded that conducting 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 Committee of primary jurisdiction, the House Permanent Select Committee on Intelligence.

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. 499.

COMMITTEE CONSIDERATION

On January 25, 2004, the Committee met in open session and with a quorum being present ordered the resolution of inquiry H. Res. 499 reported adversely without amendment by a record vote of 24 ayes to 22 noes.

VOTE OF THE COMMITTEE

A motion to report H. Res. 499 adversely to the House was agreed to by a record vote of 24 ayes to 22 noes.

Voting yes: Hyde, Leach, Bereuter, Smith (NJ), Burton, Gallegly, Ros-Lehtinen, Ballenger, Rohrabacher, Royce, King, Chabot, Houghton, McHugh, Tancredo, Smith (MI), Pitts, Flake, Davis, Green, Weller, Pence, McCotter, and Harris.

Voting no: Berman, Ackerman, Faleomavaega, Payne, Menendez, Brown, Sherman, Wexler, Engel, Delahunt, Meeks, Lee, Crowley, Hoeffel, Blumenauer, Berkley, Napolitano, Schiff, Watson, Smith (WA), McCollum, and Bell.

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(2) of House Rule XIII is inapplicable because H. Res. 499 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. 499 does not establish or authorize any new advisory committees.

CONGRESSIONAL ACCOUNTABILITY ACT

H. Res. 499 does not apply to the legislative branch.

FEDERAL MANDATES

H. Res. 499 provides no Federal mandates.

DISSENTING VIEWS

We believe, as should every member of Congress, that the intentional disclosure of the identity of a U.S. covert intelligence agent poses a grave threat to the national security of the nation and imperils the lives of the men and women who risk their lives in protecting this nation from foreign threats. In the consideration of H. Res. 499, the International Relations Committee had a choice on how to address this despicable act: whether to stand on record against this action and assume the responsibility of oversight of the Executive Branch in areas of intelligence that affect U.S. foreign policy, as the rules of the House charges it, or whether it would simply step aside and accede to the evident wishes of the Administration to investigate itself, trusting that this inherent conflict of interest will nonetheless not play any role in the administration of justice in this matter or in consideration of how to avoid leaks in the future which threaten our national security. We are gravely disappointed by the decision of the Committee, effected by the majority vote of all the Republican Members, to choose the latter course.

Last summer, the American people learned that an Administration official, reportedly from the White House, 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 Coun-

cil 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. How could anyone in the White House believe that this public revelation was not criminal or dangerous? Rather, we believe that the leaking of Mrs. 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.

The seriousness of this episode cannot be understated. The perception that senior U.S. political appointees and officials may expose covert CIA operatives' identity for political expediency—and escape punishment—may make intelligence-gathering even more difficult. If foreign sources worry that their U.S. agents' identity may be disclosed, possibly exposing their own identities, these potential sources may decide not to talk to us. In these times of terrorism, we must expand our efforts to gather human intelligence about possible terrorist attacks at every turn, because we do not know when one vital morsel of information may save thousands of innocent American lives. To the extent this episode undercuts that effort, we may sacrifice the awareness of that vital morsel of information; ultimately, we may not learn about another 9/11 in time to prevent it. Just as importantly, the danger this type of exposure poses to our dedicated covert intelligence officers and their sources is self-evident.

It is true that this matter is already being investigated by a special prosecutor, whom we do not intend to demean. But 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.

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 some choose to see this effort at seeking the truth as merely a political gambit in an election year. They should know us better than that. We note that just last month, 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.
ENI F.H. FALEOMAVAEGA.
DONALD M. PAYNE.
ROBERT MENENDEZ.
SHERROD BROWN.
BRAD SHERMAN.
ROBERT WEXLER.
ELIOT L. ENGEL.
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