

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

ADVERSE REPORT

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

ON

H. RES. 499



FEBRUARY 27, 2004.—Referred to the House Calendar and ordered to be printed.

U.S. GOVERNMENT PRINTING OFFICE

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FEBRUARY 27, 2004.—Referred to the House Calendar and ordered to be printed

Mr. HUNTER, from the Committee on Armed Services,
submitted the following

ADVERSE REPORT

[To accompany H. Res. 499]

[Including Committee Cost Estimate]

The Committee on Armed Services, 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.

PURPOSE AND SUMMARY

House Resolution 499, introduced on January 21, 2004, by Congressman Rush Holt, 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 the resolution all 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 of Ms. Valerie Plame as an employee of the Central Intelligence Agency during the period beginning on May 6, 2003, and ending on July 31, 2003.

Clause 7 of rule XIII of the Rules of the House of Representatives provides for a committee to report on a qualifying resolution of inquiry, such as H. Res. 499, within 14 legislative days or a privi-

leged motion to discharge the committee is in order. H. Res. 499 was introduced and referred to the Select Committee on Intelligence, and in addition referred to the Committees on Armed Services, International Relations, and the Judiciary on January 21, 2004.

Under the rules and precedents of the House, a resolution of inquiry is one of the means by which the House may request information from the President of the United States or the head of one of the executive departments. It is a simple resolution making a direct request or demand of the President or head of an executive department to furnish the House of Representatives with specific factual information in the possession of the executive branch. It is not used to request opinions or to require an investigation on a subject.

BACKGROUND

On July 14, 2003, syndicated columnist Robert Novak wrote a column questioning why Ambassador Joseph Wilson had been tasked with gathering information for the Bush Administration. Novak wrote, "Wilson never worked for the CIA, but his wife, Valerie Plame, is an agency operative on weapons of mass destruction. Two senior administration officials told me his wife suggested sending Wilson to Niger to investigate the Italian report. The CIA says its counter-proliferation officials selected Wilson and asked his wife to contact him."¹ Novak refused to identify his sources, but added additional detail about how he had learned of Plame's employment in an October 1, 2003, column:

During a long conversation with a senior administration official, I asked why Wilson was assigned the mission to Niger. He said Wilson had been sent by the CIA's counterproliferation section at the suggestion of one of its employees, his wife. It was an offhand revelation from this official, who is no partisan gunslinger. When I called another official for confirmation, he said: "Oh, you know about it."²

According to press reports, the CIA referred the matter to the Department of Justice after Novak's July 14, 2003, column based on the possibility that the revelation of Plame's employment status with the Central Intelligence Agency constituted a violation of the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421). This Act makes it a crime to intentionally disclose the identity of a covert agent by persons with access to classified information and foreknowledge that the government sought to protect the identity of that covert agent.

According to press reports, the Department of Justice began an investigation in September 2003, which the White House spokesman confirmed on October 1, 2003. By that time, the Justice Department had contacted the White House and asked it to preserve and maintain documents under its control. On October 3, 2003, a White House spokesperson indicated that the Justice Department had asked the White House to produce certain, more specific mate-

¹Robert Novak, "The Mission to Niger," Chicago Sun-Times, 14 July 2003, Editorial section, p. 31.

²Robert Novak, "Columnist Wasn't Pawn for Leak," Chicago Sun-Times, 1 October 2003, Editorial section, p. 49.

rials as part of the investigation, including the kinds of materials that are the subject of H. Res. 499.

On December 30, 2003, the Attorney General recused himself from the investigation to avoid an appearance of a conflict of interest. Prior to his recusal, the Attorney General, in discussions with Deputy Attorney General James Comey, concluded that it was appropriate to appoint an investigator from outside the Justice Department's normal chain of command in order to oversee the investigation. That decision fell to Deputy Attorney General Comey, who appointed U.S. Attorney for the Northern District of Illinois, Patrick Fitzgerald, to investigate the matter and act as a special counsel. Comey simultaneously delegated all necessary authorities to Fitzgerald to continue the investigation. As a sitting U.S. Attorney, Fitzgerald's investigatory authority exceeds that of a normal "special counsel." He does not have to secure approval from the Attorney General in making his prosecutorial decisions and has all the investigatory tools normally available to a U.S. Attorney at his disposal, including the authority to interview witnesses, subpoena documents and testimony, and convene a grand jury. A recent news article has stated, "Boxloads of documents have been forwarded to the FBI team, including White House phone logs and e-mails. More documents are being produced, as the contents of individual items sometimes lead agents to request additional materials. * * *" ³ According to press reports, Fitzgerald has since convened a Grand Jury to consider evidence in the investigation. In general, federal grand juries have sweeping investigative authorities to subpoena witnesses and documents identical to those identified in H. Res 499.

Justice Department officials have discussed the process associated with the investigation on the record, but have refused to discuss any details of the investigation itself in order to preserve the integrity of a possible criminal prosecution. Deputy Attorney General Comey told the media, "I can't tell you about the details of any criminal investigation because our goal is to make sure that anyone we're pursuing doesn't know what we're doing, and also, anyone who might not be charged with a crime is not unfairly smeared." ⁴

In light of the ongoing criminal investigation, the committee concluded that transmittal of the materials identified in H. Res. 499 would undermine the investigation and possible criminal prosecution of any suspects believed to have committed a crime in the Plame matter. Therefore, the committee ordered the resolution to be reported adversely.

LEGISLATIVE HISTORY

As noted above, H. Res. 499 was introduced on January 21, 2004, and referred to the Select Committee on Intelligence, and in addition to the Committees on Armed Services, International Relations, and the Judiciary. On January 28, 2004, the Select Committee on Intelligence reported adversely the resolution by a record vote of 10 ayes, three noes, and one present. The resolution was reported adversely by the Committee on the Judiciary on February 25, 2004,

³ Curt Anderson, "Rove, McClellan among Officials Interviewed in CIA Leak Probe," Associated Press Newswires, 23 October 2003.

⁴ U.S. Deputy Attorney General James Comey and Assistant Attorney General Christopher Wray, Department of Justice Press Conference, Washington, D.C., 30 December 2003.

by a record vote of 17 ayes and 8 noes, and by the Committee on International Relations on February 25, 2004, by a record vote of 24 ayes to 22 noes.

On February 25, 2004, the Committee on Armed Services held a mark-up session to consider H. Res. 499. The committee reported adversely the resolution by a record vote of 30 ayes to 23 noes.

COMMITTEE POSITION

On February 25, 2004, the Committee on Armed Services met in open session and reported adversely the resolution H. Res. 499 to the House by a record vote of 30 ayes to 23 noes, a quorum being present.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d) of rule XIII of the Rules of the House of Representatives, the committee estimates the costs of implementing the resolution would be minimal. The Congressional Budget Office did not provide a cost estimate for the resolution.

OVERSIGHT FINDINGS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities pursuant to clause 2(b)(1) of rule X, are incorporated in the descriptive portions of this report.

With respect to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974, this legislation does not include any new spending or credit authority, nor does it provide for any increase or decrease in tax revenues or expenditures.

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, performance goals and objectives can not be explained, because the resolution does not require any new funding.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds that the rule does not apply because H. Res. 499 is not a bill or joint resolution that may be enacted into law.

STATEMENT OF FEDERAL MANDATES

Pursuant to section 423 of Public Law 104–4, this legislation contains no federal mandates with respect to state, local, and tribal governments, nor with respect to the private sector. Similarly, the resolution provides no unfunded federal intergovernmental mandates.

RECORD VOTES

In accordance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the committee sets forth the following record vote that occurred during the committee's consideration of H. Res. 499.

**COMMITTEE ON ARMED SERVICES
108TH CONGRESS
ROLL CALL**

Motion to Report Adversely
H. Res. 499

Date: 02/25/04
Offered by: Weldon

Voice Vote Ayes Nays

Rep.	Aye	Nay	Present	Rep.	Aye	Nay	Present
Mr. Hunter	X			Mr. Skelton		X	
Mr. Weldon	X			Mr. Spratt		X	
Mr. Hefley	X			Mr. Ortiz		X	
Mr. Saxton	X			Mr. Evans		X	
Mr. McHugh	X			Mr. Taylor		X	
Mr. Everett	X			Mr. Abercrombie		X	
Mr. Bartlett	X			Mr. Meehan		X	
Mr. McKeon	X			Mr. Reyes		X	
Mr. Thornberry	X			Dr. Snyder		X	
Mr. Hostettler	X			Mr. Turner (TX)		X	
Mr. Jones				Mr. Smith			
Mr. Ryun (KS)	X			Ms. Sanchez		X	
Mr. Gibbons	X			Mr. McIntyre		X	
Mr. Hayes	X			Mr. Rodriguez			
Mrs. Wilson (NM)				Ms. Tauscher		X	
Mr. Calvert				Mr. Brady			
Mr. Simmons	X			Mr. Hill		X	
Mrs. Davis (VA)	X			Mr. Larson (CT)		X	
Mr. Schrock	X			Ms. Davis (CA)		X	
Mr. Akin	X			Mr. Langevin		X	
Mr. Forbes				Mr. Israel		X	
Mr. Miller (FL)	X			Mr. Larsen (WA)		X	
Mr. Wilson (SC)	X			Mr. Cooper		X	
Mr. LoBiondo	X			Mr. Marshall	X		
Mr. Cole	X			Mr. Meek			
Mr. Bradley	X			Ms. Bordallo		X	
Mr. Bishop	X			Mr. Alexander		X	
Mr. Turner (OH)	X			Mr. Ryan (OH)		X	
Mr. Kline	X						
Mrs. Miller (MI)	X						
Dr. Gingrey	X						
Mr. Rogers	X						
Mr. Franks	X						

Roll Call Vote Total:

30 Aye 23 Nay Present