

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 3, 2004.—Ordered to be printed

Mr. GOSS, from the Permanent Select Committee on Intelligence,
submitted the following

ADVERSE REPORT

together with

MINORITY, DISSENTING, AND ADDITIONAL VIEWS

[To accompany H. Res. 499]

[Including Committee Cost Estimate]

The Permanent Select Committee on Intelligence, 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.

CONTENTS

	Page
The Resolution	2
Purpose and Summary	2
Background for the Legislation	2
Hearings	5
Committee Consideration	5
Vote of the Committee	5
Committee Oversight Findings	5
New Budget Authority and Tax Expenditures	5
Committee Cost Estimate	5

Performance Goals and Objectives	6
Constitutional Authority Statement	6
Section-by-Section Analysis and Discussion	6
Changes in Existing Law Made by the Resolution, as Reported	6
Minority Views	7
Dissenting Views	9
Additional Views	13

THE RESOLUTION

The Resolution is as follows:

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.

Resolved, That—

(1) the President is requested to transmit to the House of Representatives not later than the date that is 14 days after the date of the adoption of this 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 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; and

(2) the Secretary of State, the Secretary of Defense, and the Attorney General are each directed to transmit to the House of Representatives not later than such date, all documents, including telephone and electronic mail records, logs and calendars, and records of internal discussions in the possession of the Secretary of State, the Secretary of Defense, and the Attorney General, respectively, relating to such disclosure during such period.

PURPOSE AND SUMMARY

House Resolution 499, introduced by Representative Holt on January 21, 2004, 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 its adoption 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 cabinet officers relating to the disclosure of the identity and employment of Valerie Plame during the period beginning on May 6, 2003, and ending on July 31, 2003.

BACKGROUND FOR THE LEGISLATION

House Resolution 499 is a resolution of inquiry, which pursuant to clause 7 of rule XIII 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. In calculating the days available for Committee consideration, the day of introduction and the day of discharge are not

counted.¹ 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 a 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 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."²

A Committee has a number of choices after a resolution of inquiry is referred to it. It may vote on the resolution up or down, or amend it. It can report favorable, adversely, or with no recommendation. The fact that a Committee reports a resolution of inquiry adversely does not necessarily mean that the Committee opposes looking into the matter. In the past, resolutions of inquiry have frequently been reported adversely for several reasons. The two most common reasons are substantial compliance and competing investigations.

In the first case, the Executive Branch may deliver documents which substantially comply with the resolution, thus making it unnecessary for the Committee to report the resolution favorably for floor action. In the second case, a Committee may decide the resolution may impede another investigation that is regarded as the more appropriate avenue for inquiry.

This resolution directs the President and the cabinet officers previously mentioned to turn over documents that are the subject of an ongoing criminal investigation by the Justice Department. That investigation was opened by the Justice Department in September of 2003 and appears to be moving at a rather expeditious pace. In October of 2003, the White House Counsel sent a notice to all White House employees to turn over copies of any documents for the ongoing Justice Department probe. In late October, the press reported that "[t]he FBI has interviewed more than three dozen Bush administration officials" as part of the DOJ investigation.³ The Associated Press reported that "[b]oxloads 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.* * *"⁴

On December 30, 2003, Attorney General John Ashcroft announced at a press conference that he had recused himself from the matter and had appointed Patrick Fitzgerald, United States Attorney for the Northern District of Illinois, as the special prosecutor in the case. According to press accounts in late January, Mr. Fitzgerald began submitting evidence before a federal criminal grand

¹"House Practice: A Guide to the Rules, Precedents, and Procedures of the House" Ch. 49, section 4, p. 819 (2003).

²Deschler's Precedents, H. Doc. No. 94-661, 94th Cong., 2d Sess., vol. 7, ch. 24, section 8.

³Curt Anderson, Rove, McClellan Interviewed in CIA Leak Probe, Associated Press Newswires, Oct. 23, 2003.

⁴Id.

jury.⁵ Press accounts also indicate that Mr. Fitzgerald has advised several high-level officials who have been employed by the White House that they could be summoned to testify under oath, and that he has asked other officials to meet with him informally. Mr. Fitzgerald is a veteran prosecutor known for his aggressiveness and persistence. He has extensive experience in national security and criminal matters.

A grand jury is a powerful investigative tool that allows prosecutors to bring an indictment for criminal wrongdoing. It allows investigators to subpoena witnesses and documents, including telephone and electronic mail records, logs and calendars, personnel records and records of internal discussions—all of the records that this resolution seeks to obtain. It also allows prosecutors to bring charges for making false statements to investigators. As a special prosecutor in the case, Mr. Fitzgerald does not have to consult the Attorney General or other senior Justice Department officials before issuing subpoenas or granting immunity, as U.S. Attorneys in other matters would have to do.

There is precedent for a Committee to report a resolution of inquiry adversely to avoid jeopardizing a grand jury investigation. For example, in 1980, H. Res. 571 directed the Attorney General to furnish the House with “all evidence compiled by the Department of Justice and the Federal Bureau of Investigation against Members of Congress in connection with the Abscam investigation,” which was a Justice Department undercover operation that led to charges of criminal conduct against certain Members of Congress. The resolution also asked for “the total amount of federal moneys expended in connection with the Abscam probe.”⁶

In that case, the House Judiciary Committee reported the resolution adversely.⁷ Committee opposition to the resolution was unanimous.⁸ The Justice Department “vigorously oppose[d]” the resolution.⁹ The objections raised by the Department, with which the Judiciary Committee agreed, centered on the concern that disclosure of evidence to the House would jeopardize the ability of the Justice Department to successfully conduct grand jury investigations and to prosecute any indictments, and that the release of unsifted and unevaluated evidence “would injure the reputations of innocent people who may be involved in no ethical or legal impropriety.”¹⁰

In the present case, the Committee believes that the criminal investigation being conducted by the Justice Department into the Valerie Plame matter is the most appropriate avenue for determining the facts of the case and any wrongdoing that may have occurred. As of the filing of this report, that investigation is still ongoing and transmittal of the evidence to the House would likely jeopardize the ability of the Justice Department to conduct its investigation. Because this resolution of inquiry may impede that investigation, the resolution is reported adversely.

⁵ Eric Lichtblau and David Johnston, *Jury Said to Hear Evidence in C.I.A. Leak*, New York Times, January 24, 2004, page A12.

⁶ 126 Cong. Rec. 4071 (1980).

⁷ H. Rept. No. 96-778, 96th Cong., 2d Sess. (1980).

⁸ 126 Cong. Rec. 4073 (statement by Representative McClory).

⁹ H. Rept. No. 96-778, at 2 (letter to Assistant Attorney General Philip B. Heymann).

¹⁰ Louis Fisher, Congressional Research Service, Library of Congress, *House Resolutions of Inquiry*, at 14–15 (2003).

HEARINGS

No hearings were held on the bill, H. Res. 499, by the Permanent Select Committee on Intelligence.

COMMITTEE CONSIDERATION

On January 28, 2004, a quorum being present, the Committee, in open session, adversely reported the resolution H. Res. 499 by a roll call vote of 10 ayes, three noes, one Present.

As part of its consideration of this resolution, because classified information was in fact discussed, the Committee met, in part, in closed session.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the House of Representatives, the Committee sets forth the following rollcall votes:

1. Representative Harman offered a motion to delay consideration of H. Res. 499 until February 24, 2004. The motion was defeated by a rollcall vote of nine noes and six ayes. On that vote, the Members present recorded their votes as follows: Mr. Goss (Chairman)—no; Mr. Bereuter—no; Mr. Boehlert—no; Mr. Gibbons—no; Mr. Lahood—no; Mr. Hoekstra—no; Mr. Burr—no; Mr. Everett—no; Mr. Collins—no; Ms. Harman—aye; Mr. Boswell—aye; Mr. Cramer—aye; Ms. Eshoo—aye; Mr. Holt—aye; Mr. Ruppertsberger—aye.

2. Representative Goss offered a motion to report the resolution, H. Res. 499, adversely. The Committee agreed to the motion to report the resolution adversely by a rollcall vote of 10 ayes, three noes, and one Present. On that vote, the Members present recorded their votes as follows: Mr. Goss (Chairman)—aye; Mr. Bereuter—aye; Mr. Boehlert—aye; Mr. Gibbons—aye; Mr. Lahood—aye; Mr. Hoekstra—aye; Mr. Burr—aye; Mr. Everett—aye; Mr. Collins—aye; Ms. Harman—present; Mr. Boswell—no; Ms. Eshoo—no; Mr. Holt—no; Mr. Ruppertsberger—aye.

COMMITTEE OVERSIGHT FINDINGS

In compliance with 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 under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

COMMITTEE COST ESTIMATE

In compliance with clause 3(d)(2) of House Rule XIII, 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.

PERFORMANCE GOALS AND OBJECTIVES

H. Res. 499 does not authorize funding. Therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives 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 that the rule does not apply because H. Res. 499 is not a bill or joint resolution that may be enacted into law.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

H. Res. 499 is a resolution of inquiry that 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 its adoption 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 cabinet officers relating to the disclosure of the identity and employment of Valerie Plame during the period beginning on May 6, 2003 and ending on July 31, 2003.

CHANGES IN EXISTING LAW MADE BY THE RESOLUTION, AS
REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, the Committee notes H. Res. 499 makes no changes to existing law.

MINORITY VIEWS

The men and women of the Intelligence Community deserve our total support and protection. Nothing can more seriously undermine them, or the effort to understand Iraq pre-war intelligence, than the exposure of the identity of an undercover officer. We condemn it absolutely. On this we, the undersigned, are unanimous.

We may disagree about what tactics are best designed to find and punish such a leaker. But we do not disagree at all about the need to do so. As former President Bush said about such unauthorized disclosures; "I can't think of anything that is more traitorous or more offensive to the decency that is the American way."

We believe the men and women of the Intelligence Community deserve reassurance that the Committee understands the gravity of this security breach and is exercising appropriate and responsible oversight.

Thus, we were deeply disappointed by the decision to move immediately into closed session for consideration of H. Res. 499. We believe consideration of this resolution should have been conducted in open session.

Rule 5 of the Rules for Procedure for the Permanent Select Committee on Intelligence states that proceedings shall be open unless the Committee determines that: "(A) disclosure of the matters to be discussed would endanger national security; (B) compromise sensitive law enforcement information; (C) tend to defame, degrade, or incriminate any person; or (D) otherwise violate any law or Rule of the House."

The resolution of inquiry is public legislation and could have been debated without endangering national security or compromising sensitive law enforcement information. The issues involved in the resolution are well known to the public. Moreover, moving from the open discussion to a closed session was an option that could have been taken at some later point in the meeting, thus permitting Members to state public views on the public record.

There is ample precedent of the Committee conducting business meetings and marking-up legislation in open session, including:

- The mark-up of the Homeland Security Act of 2002 on July 11, 2002;
- The business meeting to discuss the Committee's Investigation of Iraq WMD on June 12, 2003, as well as a number of follow-up discussions on the inquiry; and
- The business Meeting to discuss the handling of the Iraq Supplemental on September 17, 2003.

We are also concerned by the Committee's failure to request the information sought in the resolution from the Administration before mark-up, the usual practice when resolutions of inquiry are referred to a committee. Even if the Administration had declined

such a request, its reasons for declining could have enlightened Committee deliberations.

The House Permanent Select Committee on Intelligence is charged with oversight of the Executive Branch to ensure the protection of America's national security assets, the most important of which are the hard-working men and women of the intelligence community. We take this responsibility seriously and believe that an assertive bipartisan approach is the best means to achieving this objective.

The Committee's long tradition of bipartisanship was undermined in the handling of this resolution. The Committee's hasty action precluded well-informed, thorough and thoughtful debate, and shrouded its work in any unnecessary veil of secrecy. It is our hope that the spirit of bipartisanship will be restored and the Committee can move forward on its important agenda for the coming year.

JANE HARMAN.
ALCEE L. HASTINGS.
SILVESTRE REYES.
LEONARD L. BOSWELL.
COLLIN C. PETERSON.
BUD CRAMER.
ANNA ESHOO.
RUSH HOLT.
C.A. DUTCH RUPPERSBERGER.

DISSENTING VIEW OF REPRESENTATIVE RUSH HOLD

Mr. Chairman, I offer a dissenting view following the consideration and adverse report of H. Res. 499 by this Committee.

More than six months after columnist Robert Novak printed the name of a former intelligence employee and alleged that she was a covert agent, the White House and the Department of Justice have yet to find and hold accountable those officials responsible for the leak. Answers are overdue.

Last week, I introduced a resolution of inquiry, H. Res. 499, in the U.S. House of Representatives requesting that the Bush Administration provide Congress with all factual information in its possession, including phone records, relating to this leak. If passed, this resolution will provide Congress with the information it needs to determine independently the facts surrounding the leak, assess its damaging effects on U.S. national security and intelligence gathering, and determine whether legislative action is needed to prevent leaks of this nature in the future.

Protecting the functioning of our nation's Intelligence Community, and all who serve in it, is vital to our national security and to the safety of all Americans. At this time, a resolution of inquiry is the best tool at the disposal of this House to determine how this leak occurred and who perpetrated it.

H. Res. 499 has been referred to the House Permanent Select Committee on Intelligence, as well as the Judiciary, International Relations, and Armed Services Committees. The House Permanent Select Committee on Intelligence was the first to act earlier today, albeit prematurely in my estimation.

If we have learned anything from the war against terrorism, it is that our national security hinges upon human intelligence and the men and women who gather it. Before I introduced this resolution, I talked with a number of my colleagues on the other side of the aisle and they told me I was doing the right thing. I wish all of them had been willing to stand up today for the men and women in the Intelligence Community who put their lives at risk to keep our nation safe.

Congress, especially this Committee, has an oversight role. To say that Congress should not act because the Department of Justice, another agency, is investigating is like saying that if the Securities and Exchange Commission is looking at wrongdoing at Enron, no Congressional inquiry is appropriate.

I am severely disappointed at the lack of bipartisan cooperation on this Committee on a matter so fundamental to the national security of this country. I am disappointed that the Chairman did not even permit an open hearing to allow the public the ability to assess and judge for themselves our deliberations. This matter could have, and should have, been discussed without reference to any classified information. I must conclude that the hearing was closed

to stifle debate, rather than to protect classified information. I am disappointed that he did not permit, at the least, opening statements to be on the public record. And I am disappointed that a majority of my colleagues voted yes on the motion to report H. Res. 499 adversely.

Intelligence officers are surely disappointed too, not only by today's vote, but also by the general lack of public outrage among senior officials in our Intelligence Community, the White House, and now in the Congress at the leak of the officer's identity. To underscore this point, I included with my remarks the January 22, 2004 letter sent by ten of our retired intelligence professionals urging an immediate bi-partisan Congressional investigation of this affair.

I propose that the members of this Committee who did not want to report H. Res. 499 favorably go with me to stand before our intelligence officers to explain the Committee's action. Let us tell them face-to-face not to worry because we believe that somebody else is looking out for their interest. Let us tell them that there might be a criminal prosecution at some time, so Congress need not do anything.

There used to be a strong code of secrecy with respect to national intelligence. Maybe the days are past when the CIA was hidden behind the Army Mapping Center, the NSA was "no such agency", and the National Reconnaissance Office did not exist, but preserving the cover of officers remains essential not only for them to work and recruit sources, but even to survive.

Our intelligence officers deserve better treatment from this committee. I am hopeful that members of the Judiciary, International Relations, and Armed Services committees will stand up for them in our inexcusable absence.

Attachment.

RUSH HOLT.

[REDACTED]
[REDACTED]
Washington, DC 200 [REDACTED]

January 20, 2004

The Honorable Dennis Hastert
Speaker
U.S. House of Representatives
H-232
U.S. Capitol

Dear Mr. Speaker:

We, the undersigned former intelligence officers in the U.S. intelligence community, request that you launch an immediate, bipartisan congressional investigation into who leaked the name of Valerie Plame, wife of former U.S. Ambassador Joseph Wilson IV, to syndicated columnist Robert Novak and other members of the media that exposed her status as an undercover CIA officer. The disclosure of Ms. Plame's name was an unprecedented and shameful event in American history and, in our professional judgment, has damaged U.S. national security, specifically the effectiveness of U.S. intelligence gathering using human sources. Any breach of the code of confidentiality and cover weakens the overall fabric of intelligence, and, directly or indirectly, jeopardizes the work and safety of intelligence workers and their sources.

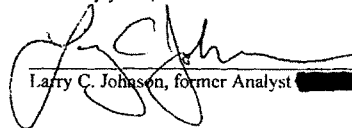
While we are pleased that the U.S. Department of Justice is conducting an investigation and that the U.S. Attorney General has recused himself, we believe that the Congress must send an unambiguous message that the intelligence officers tasked with collecting or analyzing intelligence must never be turned into political punching bags. We believe it is important that Congress speak with one non-partisan voice on this issue. Moreover, the investigation must focus on more than simply identifying who leaked this information. We believe it is important that Congress help the American people understand how this happened and take a clear stand that such behavior will not be tolerated under any Administration, Republican or Democrat. A thorough and successful congressional investigation of this crime is necessary to send a clear signal that the elected representatives of this government will not accept nor ignore the political exploitation of the men and women in our intelligence community. A professional, thorough investigation will also help boost the weakened morale of our intelligence personnel and renew their confidence and trust in the elected leadership of the country.

Our friends and colleagues have difficult jobs gathering the intelligence, which helps, for example, to prevent terrorist attacks against Americans at home and abroad. They sometimes face great personal risk and must spend long hours away from family and friends. They serve

because they love this country and are committed to defending the principles of liberty and freedom. They do not expect public acknowledgement for their work, but they do expect and deserve their government's protection.

For the good of our 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.

Sincerely yours,


Larry C. Johnson, former Analyst

JOINED BY:

James Marcinkowski, former Case Officer
Michael Grimaldi, former Analyst
Brent Cavan, former Analyst
Dr. Marc Sageman, MD, Ph.D., former Case Officer
James A. Smith, former Case Officer
John McCavitt, former Case Officer
Ray McGovern, former Analyst
Ray Close, former Analyst
William Wagner, former Case Officer

CC: House Majority Leader Tom Delay
House Minority Leader Nancy Pelosi
U.S. Representative Porter Goss, Chairman, House Permanent
Select Committee on Intelligence
U.S. Representative Jane Harman, Ranking Member, House Permanent
Select on Intelligence

ADDITIONAL VIEWS

It cannot be doubted that the House Permanent Select Committee on Intelligence (HPSCI) is dedicated to the protection of the nation's intelligence assets. In fact, with one unfortunate exception in the mid-1990s, the HPSCI has expressed time and again its commitment to the integrity of classified information provided to it by the Executive Branch. The reason for this is because we understand very certainly that exposing sources and methods not just hinders the nation's ability to protect itself from those who seek to do us harm, but also because it can mean life or death for our human assets. It is for this very reason that a substantial portion of the Committee's business is carried out in closed session. The Committee takes seriously its responsibilities in this regard and the Committee closed a portion of the mark up on this Resolution of Inquiry because, in fact, classified information was discussed. To not have closed a portion of the meeting to the public would have been nothing short of irresponsible.

The HPSCI is committed to strict enforcement of the laws and regulations that exist to protect the nation's classified intelligence information, including the enforcement of the "Intelligence Identification Protection Act of 1982." The HPSCI has and will continue to engage in dedicated and responsible oversight of issues relating to any potential leak of classified intelligence information, as well as other matters affecting the U.S. Intelligence Community. The fact that much of the HPSCI's oversight work must take place in closed session does not mitigate the importance of, or the probing nature of, the oversight to which U.S. Intelligence Community is subjected by the HPSCI. To suggest otherwise de-legitimizes the critical and significant work in which all Members of the HPSCI engage on behalf of their constituents and their colleagues in the U.S. House of Representatives.

The facts of the matter underlying the Resolution of Inquiry establish that the Department of Justice is taking this investigation very seriously. The Department of Justice is taking all appropriate steps to resolve the issues presented to it and using all investigative and prosecutorial tools available to it to determine, to the extent possible, legal responsibility for this matter. The HPSCI, of course, will continue to monitor developments of this matter in the course of its oversight responsibilities.

The men and women of the U.S. Intelligence Community can be assured that if there were any proof available that the Justice Department was not pursuing that matter as vigorously as they should, or that there were any irregularities in the processes that are being used, there may very well have been a different outcome on this Resolution in the HPSCI. The vote of the HPSCI on this Resolution, and the procedure used to dispose of this Resolution in com-

mittee, should in no way be used to characterize an individual Member's motives.

Regrettably, partisanship does exist in the world. We on the HPSCI must avoid it in every way possible. It should not intrude upon the serious and substantive oversight work of the HPSCI. The vote on the motion to report the Resolution of Inquiry to the House adversely was a bi-partisan/non-partisan vote. The HPSCI should be applauded for its continued ability to act in the best interests of the nation, even during such political times.

PORTER J. GOSS,
Chairman.

