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{ REPORT
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DIRECTING THE SECRETARY OF DEFENSE 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 DEFENSE 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. 417



SEPTEMBER 22, 2005.—Referred to the House Calendar and ordered to be printed

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DIRECTING THE SECRETARY OF DEFENSE 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 DEFENSE RELATING TO THE DISCLOSURE OF THE IDENTITY AND EMPLOYMENT OF MS. VALERIE PLAME

SEPTEMBER 22, 2005.—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. 417]

The Committee on Armed Services, to whom was referred the resolution (H. Res. 417) directing the Secretary of Defense 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 Defense 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 the resolution not be agreed to.

PURPOSE AND SUMMARY

House Resolution 417, introduced on July 29, 2005, by Congressman Rush Holt, directs the Secretary of Defense 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 his possession relating to the disclosure of Ms. Valerie Plame as an employee of the Central Intelligence Agency during the period beginning 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. 417, within 14 legislative days or a privileged motion to discharge the committee is in order. H. Res. 417 was introduced and referred to the Armed Services Committee on July 29, 2005.

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 head of one of the executive departments. It is a

simple resolution making a demand of the head of an executive department to furnish the House of Representatives with specific 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, described as a senior Clinton Administration official, 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 counterproliferation officials selected Wilson and asked his wife to contact him."¹ Novak refused to identify his sources publicly, 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 of the leak of Plame's CIA status to the Department of Justice after Novak's July column. The possibility existed that the revelation of Plame's employment status with the Central Intelligence Agency was a violation of the Intelligence Identities Protection Act of 1982 (50 U.S.C. §421). Section 421(a) provides:

Whoever, having or having had authorized access to classified information that identifies a covert agent, intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States (shall be punished)

Section 426(4)(A) of the statute defines the term covert agent to mean: (1) a present officer or employee of an intelligence agency whose identity as such an officer, employee, or member is classified information and (2) who is serving outside the United States or has within the last five years served outside the United States. At this time, it is not clear whether Plame is, or was, a covert agent, nor is it clear whether Novak's sources have, or had, access to classified information. Wilson confirmed his wife worked for the CIA in his 2004 book, but most CIA employees are not covert agents.

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.

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 materials as part of the investigation, including the kinds of materials that are the subject of H. Res. 417.

On December 30, 2003, Attorney General John Ashcroft 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 a special counsel from outside the Justice Department's normal chain of command to oversee the investigation. With Ashcroft's recusal, the special counsel selection fell to Mr. Comey, who selected the U.S. Attorney for the Northern District of Illinois, Patrick Fitzgerald, as the 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.

Attorney General Alberto Gonzalez, who succeeded Ashcroft, has also recused himself from the investigation. Gonzalez oversaw the White House response to requests from Fitzgerald investigators while he was White House counsel. With the departure of Deputy Attorney General Comey in August 2005, the Department of Justice announced that David Margolis, an associate deputy attorney general, would oversee the special counsel investigation.

According to press reports, several journalists have testified before a grand jury pursuant to the Fitzgerald investigation. These reporters include Glenn Kessler and Walter Pincus of the *Washington Post* and Tim Russert of NBC. It is unclear if Novak has testified before the grand jury. The grand jury also sought testimony from Matthew Cooper of *Time Magazine* and Judith Miller of the *New York Times*. Both refused to discuss certain issues and were found to be in contempt of court in October 2004 by Chief Justice Thomas Hogan of the U.S. District Court for the District of Columbia. In addition, *Time* was also held in contempt for refusing to produce subpoenaed documents. Judge Hogan's decision was upheld by the U.S. Court of Appeals for the District of Columbia in February 2005. On June 27, 2005, the Supreme Court declined to hear an appeal of that decision. *Time* agreed to produce the subpoenaed documents on July 1, 2005. Miller was jailed on July 6, 2005. Cooper agreed at the last minute to comply with the court order to turn over his notes, e-mails and other documents, stating he had received a specific waiver from his source to do so. On July 13, 2005, Cooper testified before the grand jury.

In a submission to the United States District Court for the District of Columbia, dated June 28, 2005, Special Counsel Fitzgerald informed Judge Hogan, "[B]y fall 2004, the Special Counsel's inves-

tigation was for all practical purposes complete except for the testimony of petitioners (Miller and Cooper).” In a letter dated September 19, 2005, Mr. William E. Moschella, the Assistant Attorney General for Legislative Affairs for the Department of Justice informed the committee, “Mr. Fitzgerald has advised that production at this time of the documents responsive to H. Res. 417 and . . . any attendant hearings, would interfere with his investigation. Accordingly, we request that the committee report adversely H. Res. 417.”

In light of the ongoing criminal investigation, the committee concluded that transmittal of the materials identified in H. Res. 417 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.

EXECUTIVE COMMUNICATION

DEPARTMENT OF JUSTICE,
ASSISTANT ATTORNEY GENERAL,
Washington, DC, September 19, 2005.

Hon. DUNCAN HUNTER,
*Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: We are advised that the Committee plans to consider H. Res. 417, which is one of a series of Resolutions of Inquiry (House Resolutions 417–420) that, if agreed to, would direct the President, the Secretary of State, the Attorney General, and the Secretary of Defense to transmit to the House of Representatives all documents in their possession relating to the disclosure of the alleged identity of Ms. Valerie Plame as an employee of the Central Intelligence Agency.

As you know, United States Attorney Patrick Fitzgerald has been appointed as Special Counsel to investigate this matter and his investigation is ongoing. Mr. Fitzgerald has advised that production at this time of the documents responsive to H. Res. 417 and the other Resolutions, and any attendant hearings, would interfere with his investigation. Accordingly, we request that the Committee report adversely H. Res. 417.

Thank you for your consideration of our views. Please do not hesitate to contact this office if you would like additional information about this or any other matter.

Sincerely,

WILLIAM E. MOSCHELLA,
Assistant Attorney General.

LEGISLATIVE HISTORY

As noted above, H. Res. 417 was introduced on July 29, 2005, and referred to the Committee on Armed Services.

On September 20, 2005, the Committee on Armed Services held a mark-up session to consider H. Res. 417. The committee reported adversely the resolution by voice vote, a quorum being present.

COMMITTEE POSITION

On September 20, 2005, the Committee on Armed Services met in open session and reported adversely the resolution H. Res. 417 to the House by voice vote, 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. 417 is not a bill or joint resolution that may be enacted into law.