

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. SENSENBRENNER, from the Committee on the Judiciary,  
submitted the following

## ADVERSE REPORT

together with

## DISSENTING VIEWS

[To accompany H. Res. 499]

[Including Committee Cost Estimate]

The Committee on the Judiciary, 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.

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## PURPOSE AND SUMMARY

House Resolution 499, introduced by Rep. 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 adoption of this resolution all physical and electronic records and documents in his possession related to the disclosure of the identity of Ms. Valerie Plame as an employee of the Central Intelligence Agency during the period May 6, 2003 through July 31, 2003.

## BACKGROUND AND NEED FOR THE LEGISLATION

House Resolution 499 is a resolution of inquiry. Clause 7 of Rule XIII of the Rules of the House of Representatives provides that if the committee does not act on the resolution within 14 legislative days, a privileged motion to discharge the committee is in order on the floor. In calculating the days available for Committee consideration, the day of introduction and the day of discharge are not counted.<sup>1</sup> On introduction, H. Res. 499 was referred to the Permanent Select Committee on Intelligence primarily, and to the Committees on Armed Services, International Relations, and the Judiciary secondarily. The Committee on Intelligence adversely reported H. Res. 499 on February 3, 2004.<sup>2</sup> On that day, Speaker Hastert extended the time for the secondary committees to consider H. Res. 499 to February 27, 2004.

Under the rules and precedents of the House, a resolution of inquiry allows the House to request information from the President of the United States or to direct the head of one of the executive departments to provide such information. 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."<sup>3</sup>

A committee has a number of choices after a resolution of inquiry is referred to it. It may vote on the resolution without amendment, or it may amend it. It may report the resolution favorably, adversely, or with no recommendation. A committee that adversely reports a resolution of inquiry does not necessarily oppose the resolution under consideration. In the past, resolutions of inquiry have been reported adversely for various reasons. Two common reasons are that an Administration is in substantial compliance with the request or that there is an ongoing competing investigation.

Under the first scenario, the Executive Branch may deliver documents that substantially comply with the resolution, thus making it unnecessary for a committee to report the resolution favorably for floor action. Second, a committee may decide to report a resolu-

<sup>1</sup>William Holmes Brown, House Practice: A Guide to the Rules, Precedents and Procedures of the House 819 (2003).

<sup>2</sup>H.R. Rep. No. 108-413, Part I (2004).

<sup>3</sup>7 Deschler's Precedents of the House of Representatives, ch. 24, § 8, p. 407.

tion of inquiry adversely because it may compete with another investigation that is regarded as the more appropriate avenue for inquiry.

The committee is reporting this resolution adversely for the second reason. H. Res. 499 would request and direct Executive Branch officials to transmit to the House of Representatives all documents on a matter that is subject to an ongoing criminal investigation. To further complicate this issue, the investigation involves classified information like the work Ms. Plame may do for the Central Intelligence Agency.

The ongoing criminal investigation stems from a July 14, 2003 article by syndicated columnist Robert Novak, questioning why retired diplomat Joseph Wilson would be sent to Niger on a CIA mission.<sup>4</sup> Mr. Novak wrote that “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 [Novak] Wilson’s wife suggested sending him to Niger to investigate. . . .”<sup>5</sup> In response to questions raised by his article, Mr. Novak wrote an explanation on October 1, 2003 that “[t]his story began July 6 when Wilson went public and identified himself as the retired diplomat who had reported negatively to the CIA in 2002 on alleged Iraq efforts to buy uranium yellowcake from Niger.”<sup>6</sup> He went on to state that he “was curious why a high-ranking official in President Bill Clinton’s National Security Council was given this assignment.”<sup>7</sup> Mr. Novak explained that “[d]uring a long conversation with a senior administration official, [he] asked why Wilson was assigned the mission to Niger. [The Senior Administration official] said Wilson had been sent by the CIA’s counterproliferation section at the suggestion of one of its employees, [Wilson’s] wife. It was an offhanded revelation from this official, who is no partisan gunslinger. When [Novak] called another official for confirmation, [that official] said: ‘Oh, you know about it.’”<sup>8</sup>

In late September, the Department of Justice opened an investigation as to whether officials who named Ms. Plame to the press violated Federal law that prohibits identifying covert agents.<sup>9</sup> On October 3, 2003, the White House Counsel sent a notice to all White House employees to turn in copies of documents for the ongoing probe into who leaked the name of a CIA operative.<sup>10</sup> That same day, the press reported that the investigation had moved beyond the White House and CIA to include the State and Defense Departments.<sup>11</sup> In late October, the press reported that “[t]he FBI has interviewed more than three dozen Bush administration officials, including political adviser Karl Rove and press secretary

<sup>4</sup>Robert Novak, Editorial, *Mission to Niger*, CHICAGO SUN-TIMES, July 14, 2003, at 31.

<sup>5</sup>*Id.*

<sup>6</sup>Robert Novak, Editorial, *Columnist Wasn’t Pawn for Leak*, CHICAGO SUN-TIMES, Oct. 1, 2003, at 49.

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>*Justice Dept. Probes White House Leak Charge*, FOXNews.com (Sept. 29, 2003), available at <http://www.foxnews.com/story/0,2933,98522,00.html> (last viewed Jan. 29, 2004).

<sup>10</sup>*White House staff put on notice*, CNN.com/Inside Politics (Oct. 3, 2003), available at <http://www.cnn.com/2003/ALLPOLITICS/10/03/leak.main/> (last viewed Jan. 29, 2004).

<sup>11</sup>*Leak Probe Moves Beyond White House, CIA*, FOXNews.com (Oct. 3, 2003), available at <http://www.foxnews.com/story/0,2933,98930,00.html> (last viewed Jan. 29, 2004); Steve Turnham, *Leak Probe widens to include State, Defense departments* CNN.com/Inside Politics (Oct. 23, 2003), available at <http://www.cnn.com/2003/ALLPOLITICS/10/02/leak.main/> (last viewed Jan. 29, 2004).

Scott McClellan, in its investigation into the leak of an undercover CIA officer's identity."<sup>12</sup> 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, one official said."<sup>13</sup>

The Attorney General recused himself from the case in December.<sup>14</sup> Deputy Attorney General James Comey appointed United States Attorney Patrick Fitzgerald to lead the investigation.<sup>15</sup> *USA Today* reported that Mr. Comey gave Mr. Fitzgerald "more independence than required under Justice Department regulations. Fitzgerald will not have to seek approval from Justice officials in Washington before issuing subpoenas or granting immunity. U.S. attorneys must get approval before taking such steps."<sup>16</sup>

In late January, the press reported that a grand jury had convened in Washington, D.C., to hear testimony on this investigation.<sup>17</sup> Further confirmation that a grand jury is investigating is found in a February 10, 2004 *Washington Post* article which says that a "federal grand jury has questioned one current and two former aides to President Bush, and investigators have interviewed several others, in an effort to discover who revealed the name of an undercover CIA officer to a newspaper columnists, sources involved in the case said yesterday."<sup>18</sup> It notes further that: "White House press secretary Scott McClellan said yesterday that he talked to the grand jury on Friday. Mary Matalin, former counselor to Vice President Cheney, testified Jan. 23, the sources said. Adam Levine, a former White House press official, also testified Friday, the sources said."<sup>19</sup>

"The Federal grand jury enjoys sweeping authority"<sup>20</sup> that allows investigators to subpoena witnesses and request the same documents requested in H. Res. 499, including telephone and electronic mail records, logs and calendars, personnel records, and records of internal discussions.

This Committee has previously reported a resolution of inquiry adversely to avoid jeopardizing a grand jury investigation. According to the Congressional Research Service:

In 1980, for example, 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

<sup>12</sup>Curt Anderson, *Rove, McClellan Interviewed in CIA Leak Probe*, ASSOCIATED PRESS NEWSWIRES, Oct. 23, 2003.

<sup>13</sup>*Id.*

<sup>14</sup>Toni Locy, *Attorney General recuses himself from CIA probe*, USATODAY.com (Dec. 30, 2003), available at <http://www.usatoday.com/news/washington/2003-12-30-cia-leak-x.htm> (last visited Jan. 29, 2003).

<sup>15</sup>*Id.*

<sup>16</sup>*Id.*

<sup>17</sup>John Dickerson & Viveca Novak, *Grand Jury Hears Plame Case*, Time.com (Jan. 22, 2004), available at <http://www.time.com/time/nation/article/0,8599,581456,00.html> (last visited Jan. 29, 2004).

<sup>18</sup>Mike Allen & Susan Schmidt, *Bush Aides Testify in Leak Probe*, *Washington Post*, (Feb. 10, 2004), p. A01.

<sup>19</sup>*Id.*

<sup>20</sup>Charles Doyle, Congressional Research Service Report for Congress: Federal Grand Juries: the Law in a Nutshell 1 (Feb. 5, 2002).

Members of Congress. The resolution also asked for “the total amount of Federal moneys expended in connection with the Abscam probe.” [126 Cong. Rec. 4071 (1980).]

The House Judiciary Committee reported the resolution adversely. [H. Rept. No. 96-778, 96th Cong., 2d Sess. (1980).] Committee opposition to the resolution was unanimous. [126 Cong. Rec. 4073 (statement by Rep. McClory).] The Justice Department “vigorously oppose[d]” the resolution. [H. Rept. No. 96-778, at 2 (letter to Assistant Attorney General Philip B. Heymann).] The objections raised by the department, with which the committee agreed, centered on the concern that disclosure of evidence to the House would jeopardize the ability of the 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.” *id.*<sup>21</sup>

This Committee has also adversely reported a resolution of inquiry because of other types of competing investigations. For instance, on July 17, 2003, this Committee adversely reported H. Res. 287, a resolution of inquiry, due to an ongoing competing investigation of the Inspector General of the Department of Justice. That resolution of inquiry directed the Attorney General to transmit all physical and electronic records and documents in his possession related to any use of Federal agency resources in any task or action involving or relating to Members of the Texas Legislature in the period beginning May 11, 2003, and ending May 16, 2003, except information the disclosure of which would harm the national security interests of the United States. The Committee’s report stated:

According to a May 12, 2003, press release issued by the Texas Department of Public Safety, the public was asked for assistance in locating 53 Texas legislators who had “disappeared.” According to the release, under the Texas Constitution, the majority of members present in session in the Texas State House can vote to compel the presence of enough members to make a quorum. Members of the House did so and directed the Sergeant-at-Arms of the House and the Department of Public Safety to locate the absent members and bring them back to the State capital.

On May 27, 2003, Sen. Joseph Lieberman of Connecticut sent a letter to the Office of the Inspector General of the U.S. Department of Justice asking for “a full investigation into this matter.” After receipt of the letter from the Senator, in a statement to the press, the Office of the Inspector General disclosed that on June 4, 2003, it began investigating what, if any, Department of Justice resources were expended in connection with this matter. As of the filing of this report, that investigation is still ongoing.

<sup>21</sup> Louis Fisher, Congressional Research Service Report for Congress: House Resolutions of Inquiry 14-15 (May 12, 2003).

The Committee believes that an investigation by the Inspector General of the Department of Justice is the more appropriate avenue. . . .<sup>22</sup>

With regard to H. Res. 499, the Committee believes that the current grand jury investigation is the more appropriate avenue for determining the facts of the case and any criminal wrongdoing. The Judiciary Committee agrees with the Permanent Select Committee on Intelligence that the investigation “is still ongoing and transmittal of evidence to the House would likely jeopardize the ability of the Justice Department to conduct its investigation.”<sup>23</sup> Because this resolution of inquiry competes with that investigation, the resolution is reported adversely.

#### HEARINGS

No hearings were held in the Committee on the Judiciary on H. Res. 499.

#### COMMITTEE CONSIDERATION

On February 25, 2004, the Committee met in open session and adversely reported the resolution H. Res. 499 without amendment by a rollcall vote of 17 yeas to 8 nays, a quorum being present.

#### VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth the following rollcall votes that occurred during the Committee’s consideration of H. Res. 499:

1. An amendment offered by Representative Jackson Lee would have excluded the transmission of documents that would violate the prohibition under Rule 6(e) of the Federal Rules of Criminal Procedure against disclosing grand jury material. The amendment was defeated by a rollcall vote of 8 yeas to 17 nays.

#### ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde .....			
Mr. Coble .....		X	
Mr. Smith .....		X	
Mr. Gallegly .....		X	
Mr. Goodlatte .....			
Mr. Chabot .....		X	
Mr. Jenkins .....		X	
Mr. Cannon .....		X	
Mr. Bachus .....		X	
Mr. Hostettler .....		X	
Mr. Green .....		X	
Mr. Keller .....		X	
Ms. Hart .....		X	
Mr. Flake .....			
Mr. Pence .....		X	
Mr. Forbes .....			
Mr. King .....		X	
Mr. Carter .....		X	
Mr. Feeney .....		X	

<sup>22</sup> H.R. Rep. No. 108–215 at 3 (2003).

<sup>23</sup> H.R. Rep. No. 108–413 Part I at 4 (2004).

## ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mrs. Blackburn .....		X	
Mr. Conyers .....	X		
Mr. Berman .....			
Mr. Boucher .....			
Mr. Nadler .....	X		
Mr. Scott .....			
Mr. Watt .....			
Ms. Lofgren .....			
Ms. Jackson Lee .....	X		
Ms. Waters .....			
Mr. Meehan .....	X		
Mr. Delahunt .....			
Mr. Wexler .....	X		
Ms. Baldwin .....	X		
Mr. Weiner .....			
Mr. Schiff .....	X		
Ms. Sánchez .....	X		
Mr. Sensenbrenner, Chairman .....		X	
Total .....	8	17	

2. Final Passage. The motion to report the resolution, H. Res. 499, adversely was agreed to by a rollcall vote of 17 yeas to 8 nays.

## ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde .....			
Mr. Coble .....	X		
Mr. Smith .....	X		
Mr. Gallegly .....	X		
Mr. Goodlatte .....			
Mr. Chabot .....	X		
Mr. Jenkins .....	X		
Mr. Cannon .....	X		
Mr. Bachus .....	X		
Mr. Hostettler .....	X		
Mr. Green .....	X		
Mr. Keller .....	X		
Ms. Hart .....	X		
Mr. Flake .....	X		
Mr. Pence .....	X		
Mr. Forbes .....			
Mr. King .....	X		
Mr. Carter .....	X		
Mr. Feeney .....	X		
Mrs. Blackburn .....			
Mr. Conyers .....		X	
Mr. Berman .....			
Mr. Boucher .....			
Mr. Nadler .....		X	
Mr. Scott .....			
Mr. Watt .....		X	
Ms. Lofgren .....			
Ms. Jackson Lee .....			
Ms. Waters .....			
Mr. Meehan .....		X	
Mr. Delahunt .....		X	
Mr. Wexler .....		X	
Ms. Baldwin .....			
Mr. Weiner .....			
Mr. Schiff .....		X	
Ms. Sánchez .....		X	

## ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Sensenbrenner, Chairman .....	X		
Total .....	17	8	

## 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 Rule XIII of the Rules of the House of Representatives 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 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.

## 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

## THE RESOLUTION

Paragraph (1) of H. Res. 499 requests that the President 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

Paragraph (2) of H. Res. 499 directs the Secretary of State, the Secretary of Defense, and the Attorney General 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.

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 that H. Res. 499 makes no changes to existing law.

MARKUP TRANSCRIPT  
**BUSINESS MEETING**  
**WEDNESDAY, FEBRUARY 25, 2004**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:08 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A quorum is present.

Pursuant to notice, I now call up H. Res. 499, a resolution 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 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 for purposes of markup and move its adverse recommendation to the House.

Without objection, the resolution will be considered as read and open for amendment at any point. I would point out to the membership that only paragraph two of the resolution is within the jurisdiction of the Judiciary Committee.

[The resolution, H. Res. 499, follows:]

108TH CONGRESS  
2D SESSION

# 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.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 21, 2004

Mr. HOLT (for himself, Ms. ESHOO, Mr. REYES, Mrs. TAUSCHER, Mr. LARSON of Connecticut, Mr. WAXMAN, Mr. LANTOS, Mr. CONYERS, Mr. SPRATT, Mr. TURNER of Texas, and Mr. MORAN of Virginia) submitted the following resolution; which was referred to the Select Committee on Intelligence (Permanent Select), and in addition to the Committees on Armed Services, International Relations, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## RESOLUTION

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.

1      *Resolved*, That—

1           (1) the President is requested to transmit to  
2     the House of Representatives not later than the date  
3     that is 14 days after the date of the adoption of this  
4     resolution, all documents, including telephone and  
5     electronic mail records, logs and calendars, personnel  
6     records, and records of internal discussions in the  
7     possession of the President relating to the disclosure  
8     of the identity of Ms. Valerie Plame as an employee  
9     of the Central Intelligence Agency during the period  
10    beginning on May 6, 2003, and ending on July 31,  
11    2003; and

12           (2) the Secretary of State, the Secretary of De-  
13    fense, and the Attorney General are each directed to  
14    transmit to the House of Representatives not later  
15    than such date, all documents, including telephone  
16    and electronic mail records, logs and calendars, and  
17    records of internal discussions in the possession of  
18    the Secretary of State, the Secretary of Defense,  
19    and the Attorney General, respectively, relating to  
20    such disclosure during such period.

○

The chair now recognizes himself for 5 minutes to explain the resolution.

Today, the Committee considers H.R. 499, a resolution of inquiry relating to Ms. Valerie Plame. This resolution requests officials in the executive branch to transmit to the House all records in their possession relating to the disclosure of the identity of Ms. Plame as an employee of the Central Intelligence Agency during the period May 6, 2003, through July 31, 2003.

I move that the Committee report the resolution adversely. I made the adverse motion because passing the resolution would interfere with an ongoing criminal investigation. A competing investigation is a common reason that Committees have adversely reported resolutions of inquiry in the past. It is also the reason that the House Intelligence Committee adversely reported this resolution on February 4.

Likewise, this Committee has previously reported such resolutions adversely for the same reason. On July 17, 2003, this Committee adversely reported H. Res. 287 relating to the Texas redistricting matter because of an ongoing investigation being conducted by the Inspector General of the Department of Justice. In the 1980s, the Committee reported a resolution adversely to avoid jeopardizing a grand jury investigation into the ABSCAM case, which as many Members may recall ended up resulting in the conviction of certain Members of Congress of crimes.

I recommend that Members of this Committee follow this precedent and refrain from jeopardizing the ongoing criminal investigation. Published reports and statements of the Department of Justice indicate that there is an ongoing, active investigation. Recent stories indicate that the investigation is before a grand jury.

Having said that, let me briefly review the short history of this investigation. On July 14, 2003, syndicated columnist Robert Novak in an article questioning why retired diplomat Joseph Wilson would be sent to Niger on a CIA mission wrote that, quote, "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 Novak Wilson's wife suggested sending him to Niger to investigate," unquote.

In late September, the Department of Justice opened an investigation to determine whether the two unnamed officials violated a Federal law that prohibits identifying covert agents. On October 3, 2003, the White House counsel directed all White House employees to turn in copies of documents for the ongoing probe. That same day, the press reported that the investigation had moved beyond the White House and CIA to include the State and Defense Departments.

In late October, the press reported, quote, "that the FBI has interviewed more than three dozen Bush administration officials, including political advisor Karl Rove and Press Secretary Scott McClellan in its investigation into the leak of an undercover CIA officer's identity," unquote. And the Associated Press reported, quote, "that boxloads of documents have been forwarded to the FBI team, including White House phone logs and e-mails. More documents are being produced," unquote.

In late December, the Attorney General recused himself from participating in the investigation. Deputy Attorney General Comey

appointed United States Attorney Patrick Fitzgerald to lead the investigation. USA Today reported that, "Mr. Comey gave Mr. Fitzgerald more independence than required under Justice Department regulations. Fitzgerald will not have to seek approval from Justice officials in Washington before issuing subpoenas or granting immunity. U.S. Attorneys must get approval before taking such steps," unquote.

In late January, the press reported that a grand jury had convened in Washington, D.C., to hear testimony on this investigation. On February 10, 2004, the Washington Post reported that, "the Federal grand jury has questioned one current and two former aides to President Bush and investigators have interviewed several others in an effort to discover who revealed the name of an undercover CIA officer to newspaper columnists, sources involved in the case said yesterday," unquote. The article further confirmed that the case has moved to a grand jury, stating that, "White House Press Secretary Scott McClellan said yesterday, February 9, that he talked to the grand jury on Friday," unquote.

A Federal grand jury has broad authority that allows investigators to subpoena witnesses and to request the same documents requested in H. Res. 499, including telephone and electronic mail records, logs and calendars, personnel records, and records of internal discussion. This resolution competes with that investigation. The investigation is, by all accounts, proceeding quickly and the Committee has not received credible allegations that Mr. Fitzgerald or the grand jury are in any way derelict in their duties. The current grand jury investigation is the more appropriate avenue for determining the facts of the case and the existence of any criminal wrongdoing.

The Permanent Select Committee on Intelligence came to the same conclusion, finding that the investigation is still ongoing and transmittal of evidence to the House would likely jeopardize the ability of the Justice Department to conduct its investigation.

I agree and urge the Members to support the motion to report adversely.

Who wishes to give the Democrat opening statement? The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. Mr. Chairman, we have every evidence that a cover-up is going on, plain and simple. Someone high up in the Bush administration deliberately disclosed the identity of a CIA operative. If the President really wanted to find out who it was, it would take him about 5 minutes to find out. Anyone who thinks otherwise doesn't know how administrations work. The person would be fired immediately, I would hope, justice could take its course, and the issue would be resolved.

Revealing the identity of a covert agent is a serious matter. It is, in fact, a crime. It endangers lives. It is indefensible for this Committee to turn a blind eye. We need to know who committed this crime and who endangered the national security and who put lives at risk.

I don't know why any Member would oppose this resolution. I don't know why any Member would not want to get the facts in this case. I don't know why any Member would trust the Bush administration to be honest about seeking the facts in this case.

If we reject this resolution, we risk sending the message that Members of Congress are complicit in working with the Administration on a cover-up. I don't want to send that signal. I can't imagine any Member of this Committee would want to send that message, either. That is why we must support this resolution and do our job to perform oversight of the Department of Justice and that is a serious national concern.

We know from Robert Novak himself, who wrote the published article, that, quote, "two senior Administration officials," close quote, gave him the information. It appears that the Bush administration is hiding the identity of these criminals in their midst. We don't know why. We could only speculate. It may be—the speculation of the press is this was a message to Mr. Wilson, Ms. Plame's husband, and to other would-be whistleblowers, don't say anything about—embarrassing about the Bush administration. Mr. Wilson, of course, had talked about the lack of evidence of weapons of mass destruction in Iraq. He had to be punished and others warned, so his wife was outed as a CIA operative.

It may be difficult to conceive of who would be willing to perform such a serious criminal act, but if these people are indeed senior officials, as Mr. Novak wrote, it is even more important that they, who as senior officials presumably have considerable power and influence, be brought to justice. During the war on terror, we cannot afford to have criminals who reveal our sources or put lives in jeopardy working at the highest levels of power.

Now, it is the job of this Committee to oversee the Department of Justice. We need to know what it is doing and we need to find out if it is doing its job well or not. That is why we are asking for these documents. We're not trying to interfere with the investigation, though I certainly am dubious that it is a thorough going and honest investigation, because I said if they really wanted to know, they should have taken about 5 minutes. But we are interested in knowing how it is progressing.

Do we have the right to ask such questions, or is asking such questions and passing this resolution somehow an interference, as was suggested a few moments ago, with this investigation? Well, just a few years ago, the Government Reform Committee held hearing after hearing after hearing on ongoing investigations and the Clinton administration handed over 1.2 million pages of documents to the Committee. There have been hearings on campaign finance, on Waco, on pardons, on ENRON, and even on Martha Stewart, all while investigations in the executive branch were progressing.

The Committees of this House did not think that their hearings on those subjects interfered with ongoing investigations, so I have little patience to hear anyone argue that we don't have the authority or the responsibility at this point to investigate whether or not and which two senior Administration officials broke the law, jeopardized our intelligence efforts during the current war on terror, and jeopardized the lives of our agents.

Again, I urge my colleagues to support independence and justice over party allegiance and to support this really very mild resolution of inquiry.

I thank the chair and I yield to the distinguished Ranking Member. Thank you.

Mr. CONYERS. I want to thank the gentleman from New York for making a response on our behalf. I'd like to just close his opening statement by referencing the fact that there is no validity to the claim that legitimate Congressional oversight would interfere with the ongoing Justice Department investigation of this matter. Now, let's all at least agree on this.

The Congress has investigated any number of matters while there were pending criminal investigations. If that were not so, I wouldn't be here to name them off for you right now. In fact, this Committee has done it over and over and over again. The Waco hearings took place during a number of criminal prosecutions. Then there were the Inslaw hearings. There was the campaign finance investigation, where this Committee forced the Department of Justice to turn over internal documents about a number of pending investigations. When it came to the land deals in Arkansas, the suicide of Vince Foster, or other matters, this Congress has an appropriate authority for investigation.

And so when it now comes to the disclosure of national security secrets by high-ranking officials likely in the White House, there is a sudden reluctance to move forward, and I think that we ought to get over that. We may have different positions on why we're going to do this, but we certainly don't want to claim that we would be interfering with an ongoing investigation, and I thank the Chairman for his patience.

Chairman SENSENBRENNER. The gentleman's time is expired. Without objection, all Members may place opening statements into the record at this point.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF TEXAS

Chairman Sensenbrenner and Ranking Member Conyers, thank you for your work and leadership in convening today's markup of H. Res. 499. In light of the posture of Operation Iraqi Freedom, our nation's occupation of Iraq, and the status of the interim government that will be in place in that region, it is important that we parse through the potential ethical and oversight issues that remain unresolved.

Before we can help Iraq establish a government that is based on democratic principles, transparency, and accountability, we must demonstrate that we ourselves adhere to these things. Although the jurisdictional limitations of this Committee narrow the scope of our purview to directing the Department of Justice to produce documents and other information relative to this breach of national security, we must not allow other departments and authority figures to escape from accountability and the duty of giving honest and complete information when it relates to the safety and welfare of our nation. It is very likely that Federal laws have been broken, namely 50 U.S.C. § 491 and 18 U.S.C. § 793 (2002), which criminalize the exposure of undercover operatives and the transmission of defense information.

There is long-standing precedent for our Committee to investigate criminal and ethical matters both prior to and concurrently with a Department of Justice investigation. In 1997, this Committee conducted high profile hearings about campaign finance improprieties in the 1996 presidential election as the Attorney General contemplated appointing an independent counsel. In 1995, the Judiciary Committee's Subcommittee on Crime heard 12 days of testimony as part of a Congressional investigation into Federal actions at the Branch Davidian Compound in Waco, Texas. In 1992, the Full Committee and the Subcommittee on Crime and Criminal Justice held hearings on whether high ranking officials in the DOJ and the CIA knew of fraudulent loans to Iraq, and misrepresented this information in Federal district court. Between 1989 and 1992, the Committee and the Subcommittee on Economic and Commercial Law investigated claims that the DOJ ran a small computer company INSLAW into insolvency in order to steal its software program. This investigation ran concurrently with a special counsel appointed in 1989 by Attorney General William Barr.

The pace at which certain information was made available to the public demonstrates that the investigation is not being conducted in a thorough or unbiased manner. For example:

- On September 30, the DOJ gave the White House eleven hours notice before the investigation was officially started, leaving ample time for the destruction of evidence. ("Investigating Leaks," NYT, Oct. 2, 2003)
- The Attorney General has documented ties to Karl Rove, a primary target of the investigation, that render him an inappropriate person to ultimately oversee the outcome of this inquiry. Mr. Rove worked on three of John Ashcroft's campaigns in the late 1980's and early 1990's, collecting \$746,000 in fees. (Duffy, "Leaking With a Vengeance," Time, Oct. 5, 2003)
- Despite the Attorney General's conflicts, he is still involved with the investigation on an intimate level. On October 21, 2003 Christopher Wray, Associate Deputy Attorney General testified before the Senate Judiciary Committee that he regularly informs the Attorney General about the investigation. He divulges the names of those interviewed, and enough detail "for him to understand meaningfully what's going on in the investigation." (Lichtblau, NYT, Oct. 22, 2003)
- The DOJ investigation is replete with conflicts of interests. Associate Attorney General Robert McCallum, who is overseeing the Investigations Division's progress, is an old friend of President Bush's. They were classmates at Yale and members of the secretive Skull and Bones Society together. (Schmitt and Chen, "Leak Inquiry Embarks on a Long Road," L.A. Times, Oct. 2, 2003)
- FBI officials have acknowledged that they will be going a "bit slower on this one because it is so high-profile. This will get scrutinized at our headquarter and at Justice in a way that lesser, routine investigations wouldn't." (Stevenson and Lichtblau, "Attorney General Is Closely Linked to Inquiry Figures," NYT Oct. 2, 2003)
- The White House publicly ruled out Karl Rove, vice presidential chief of staff Lewis Libby, and National Security Council senior director Elliott Abrams as possible sources for the news leak. We have no way of knowing how the White House reached these conclusions. To the extent the investigation conflicts with these comments, the White House will be in the awkward predicament of publicly contradicting their superiors. (Mikkelsen, "White House Says Three Senior Aids Innocent In Leak," Reuters, Oct. 7, 2003)
- On October 7, the White House announced that it will be screening documents for "relevance" before handing them over to the DOJ, to which the DOJ has yet to object. This could result in the White House filtering out important information that could shed light on the source of the leak. (Stevenson and Lichtblau, "Leaker May Remain Elusive, Bush Suggests," NYT, Oct. 8, 2003)
- Career professionals have expressed concern that the investigation has run amok. Senior criminal prosecutors and FBI officials "fear Mr. Ashcroft could be damaged by continuing accusations that as an attorney general with a long career in Republican partisan politics, he could not credibly lead a criminal investigation that centered on the aides to a Republican president." (Johnston and Lichtblau, "Senior Federal Prosecutors and FBI Officials Fault Ashcroft Over Leak Inquiry," NYT, Oct. 16, 2003) A former State Department Deputy Chief of Counterterrorism has asked Congress to investigate the leak, commenting that "there's a lot they can do without undermining the criminal investigation." (Lichtblau, NYT, Oct. 22, 2003)
- The White House still has not taken affirmative steps to trace the leak. Just this week, the President stated in a press conference that he had no plans to ask his staff to sign affidavits denying their involvement. (Johnston and Lichtblau, NYT, Oct. 29, 2003)

Not only is the question of criminal culpability critical in this matter, but the issue of what role the White House had in subsequent efforts to tarnish Ambassador Wilson and his wife has tremendous relevance. A Republican congressional staffer admitted that the Administration's political strategy for dealing with Wilson and his wife was to "slime and defend." (Stevenson and Lichtblau, "White House Looks to Manage Fallout Over C.I.A. Leak Inquiry," Oct. 2, 2003) It has also been reported that after the leak was initially disseminated, Karl Rove told Chris Mathews that Mr. Wilson's wife and her under cover status were "fair game." (Thomas and Isikoff, "Secrets and Leaks," Newsweek, Oct. 13, 2003) White House sources responded by asserting that Rove had merely told the press "it was reasonable to discuss who sent Wilson to Niger." (Id.) In either event, it appears as though the power of the White House may have been used to harm U.S. citizens.



I will be offering an amendment to H. Res. 499. The first relates to the need to include within the scope of the materials and information required under the resolution any and all communications with journalists in connection with the disclosure of the identity of Ms. Plame. This amendment will be vital to ensuring the complete and timely production of relevant information that we request from the President, Secretary of State, Secretary of Defense, and the Attorney General. Furthermore, calling for testimony of these journalists will trigger accountability for any illegal actions by the aforementioned government officials.

Given the national security implications of these matters and the challenges to White House integrity that are attendant, it is also imperative that the key officials involved with and responsible for this situation come forward before the committee, present their documentation, telephone and other logs to us, and testify under oath regarding their involvement in this matter.

[The prepared statement of Mr. Wexler follows:]

PREPARED STATEMENT OF THE HONORABLE ROBERT WEXLER, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF FLORIDA

The outing of Ms. Valerie Plame's identity as a Central Intelligence Agency (CIA) operative has cast the darkest of clouds over the Bush Administration. Especially when the federal government is calling on qualified Americans—and friends in other nations—to fight our war on terrorism by serving in dangerous intelligence-gathering positions, it is incredulous that this White House would put an American's life in danger for its own political standing.

Ms. Plame's husband, Mr. Joseph C. Wilson IV, is a career American diplomat and former ambassador who traveled to Niger in 2002 at the request of the CIA. Ambassador Wilson was instructed to determine the veracity of a British report claiming that Iraq had tried to buy uranium ore for its alleged nuclear weapons program. President Bush used the claim in his 2003 State of the Union speech as a key reason for the United States to go to war to stop Saddam Hussein from developing and using weapons of mass destruction.

Ambassador Wilson found no such evidence and later discredited the claim in a New York Times opinion article. Subsequently, conservative columnist Bob Novak revealed in a critical opinion article that Ambassador Wilson's wife, Valerie Plame, has been a covert CIA operative using senior officials of the Bush Administration as sources.

It appears that certain individuals of this White House wanted to protect President Bush's public image by stifling his policy detractors. These political spin-meisters clearly used their positions of influence to intimidate the intelligence community just to protect President Bush's shoddy arguments for starting a preemptive, unilateral war.

This flagrant disregard for the lives of Ms. Plame and her contacts is not only a shameful abuse of power but a violation of federal law. In addition, the lives of all undercover agents are now placed in jeopardy because the nefarious individuals who outed Ms. Plame still lurk within the inner sanctum of the West Wing.

If these brave CIA operatives—whose unknown and unsung service is so crucial to the safety of our nation—are to effectively and objectively gather and analyze intelligence, they must not fear political pressure to abridge their conclusions. It is crucial that we waste no time in rooting out the betrayers in the Administration.

Chairman SENSENBRENNER. Are there amendments?

Ms. JACKSON LEE. I have an amendment at the desk, Mr. Chairman.

Chairman SENSENBRENNER. The Clerk will report the amendment.

Ms. JACKSON LEE. This is the amendment—I'm sorry. This is the amendment dealing with the grand jury exception. It's JCAM2, please.

The CLERK. Amendment to H. Res. 499 offered by Ms. Jackson Lee. Page 2, line 20, insert before the period at the end the following: “, except that, in the case of such documents in the possession of the Attorney General——”

[The amendment follows:]

**AMENDMENT TO H. RES 499**  
**OFFERED BY MS. JACKSON LEE**

Page 2, line 20, insert before the period at the end the following: “, except that, in the case of such documents in the possession of the Attorney General, only those documents the transmission of which does not violate rule 6(e) of the Federal Rules of Criminal Procedure, as determined by the Federal official appointed to carry out the criminal investigation of the Department of Justice into the disclosure of Ms. Valerie Plame as an employee of the Central Intelligence Agency”.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and the gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. I thank the Chairman very much.

My reading of the Constitution clearly establishes three distinct branches of Government. I believe the American people have comfort in their republic and their democracy because of the fact that the elected body, Members of the House of Representatives and Members of the United States Senate, have the responsibility of oversight, cautious but yet productive with an investigative arm to ensure that this Government works.

This is a very simple case, Mr. Chairman. It is a case that this Committee should not abdicate its responsibility nor any other Member of the United States Congress. It saddens me, the Committees already that have had the opportunity to review this particular amendment, H. Res. 499, have decided in some instances not to pass it out with the opportunity for it to go to the floor of the House. It is a clear case of an abuse of Government.

It is interesting, as my colleagues have already noted, that any manner of infraction that might have been perceived by past administrations were quick to be reviewed by this Congress, even to the extent of a President's sexual activities, personal and not governmental, were brought as an impeachment proceeding. But yet when we seek to find the truth that bears upon the potential, if you will, loss of life of an undercover CIA agent, also impacting on how we treat other CIA agents, we cannot find not one Committee that is willing to do its duty.

This particular amendment is very simple. It responds to the concerns of the opponents of this particular resolution to suggest that any documents necessary for the grand jury or presently before the grand jury would be accepted from presenting them to the United States Congress and to this Committee.

It is important to note that there is an investigation done by the executive, the executive investigating the executive. Mr. Chairman, that is not satisfactory. First of all, this is a deadly representation. The suggestion that people in the White House provided information to uncover a covert operative is deadly. It is deadly for our intelligence. It is deadly for the operatives we have around the country and the nation, and we do not know the damage at this point.

In addition, it has come to our attention that many who are investigating this particular activity are either related in some way to the Administration and the President by being a relative, by being a classmate, but there is clearly conflict of interest.

I cannot imagine that this Congress would abdicate its responsibility for a simple task. That simple task is to get to the bottom of the statement by Robert Novak where he uncovered in his public column the idea that there was a covert agent married to Ambassador Wilson. Was it because of the fact that Ambassador Wilson came forward and told us the truth about weapons of mass destruction? Was it because he was trying to apprise the American people and save lives from a lack of—from a campaign in Iraq that had no thought and no basis in conscience or in morality or in truth?

And so I'd simply ask my colleagues to consider the fact that we can make this resolution better. We can join in a bipartisan manner by accepting any materials that are already submitted to the

grand jury and ensuring that there are two bilateral, if you will, investigations, that of the United States Congress doing our duty, and that of the Administration or the executive.

I cannot believe that a Congress that has had a long list of investigations controlled by the Republican majority, from campaign finance reform to Watergate to all kinds of "gates," would not be willing to address the question that now has jeopardized the lives of one CIA agent, but it may be many. The truth must be found. This particular Committee that houses in its bosom, if you will, the Constitution has a responsibility to do so.

I'd ask my colleagues to support this amendment, which is a grand jury exception. I yield back.

Chairman SENSENBRENNER. The chair recognizes himself for 5 minutes in opposition to the amendment.

The gentlewoman from Texas proposes to accept any material that goes before the grand jury from the scope of the documents that have to be handed over, and I just remind Members that a grand jury has broad authority that allows investigators to subpoena witnesses and request the same documents that were requested in this resolution. That includes phone records, e-mail records, logs and calendars, personnel records, and records of internal discussion.

Now, if the amendment of the gentlewoman from Texas is adopted, there really isn't much that the Justice Department can turn over because those are the types of materials that the grand jury needs in order to investigate whether a violation of criminal law has occurred.

Now, having said that, if the gentlewoman from Texas wants to make sure that whomever violated Federal law, if Federal law has been violated in disclosing Ms. Plame's identity and places of employment, gets prosecuted and goes to jail, then I think that she really wouldn't want to support the amendment, wouldn't want to support the resolution, because it's not the job of Congress to send criminals to jail. It is the job of the executive branch under the Constitution to do the investigating, to enforce the law, to seek indictments, and to try cases in court.

So I think this amendment, I think kind of blows the cover of what's going on here. The author of this amendment appears to want to make a political statement. She does not want to have the grand jury be able to zero in on whether a violation of the law occurred, and if so, return an indictment so that the defendant can be brought before a jury of his or her peers and tried and, if convicted, sentenced.

Now, I'm a little bit concerned whenever I hear that we shouldn't have the executive investigate the executive. That to me sounds like a call for reinstitution of the independent counsel law and we don't need to have any more Kenneth Starrs running around investigating, whether it is a Republican administration or a Democrat administration.

I am convinced that the decision of the Attorney General to recuse himself and to turn this matter over to Patrick Fitzgerald, who is the United States Attorney in Chicago, was a correct decision. Mr. Fitzgerald is a man of unimpeachable integrity. Mr. Fitzgerald, as you may recall, also returned an indictment against a former Republican Governor of Illinois, George Ryan, and every-

body I have talked to has been impressed with the fact that he does not let politics interfere with the investigations that he is in charge of. And I've heard no allegation that politics has interfered with this investigation. The man is doing his job. He ought to be allowed to do his job, and he ought not to have Congress interfere with his ability to do his job.

Now, finally, I've been around here long enough to remember what happened during the Iran-Contra affair. Congress stuck its big nose into an investigation that was going on. It granted certain types of immunity to Admiral John Poindexter and Lieutenant Colonel Oliver North. They were convicted in court of crimes relating to Iran-Contra. Their convictions were reversed on appeal because the appeals court determined that the prosecution used immunized testimony in the course of the trial. The independent counsel that was looking into this matter decided that there was not enough unimmunized testimony left to retry the case, so these people who were convicted based upon immunized testimony ended up not facing the legal music.

So when Congress decides to engage in a political sideshow rather than allowing a criminal prosecution and investigation to go forth to its conclusion, there is a possibility and perhaps even a probability that a guilty person can go free, and I don't think we should go down that road again. We got burned in Iran-Contra and we should not get burned a second time, and I yield back the balance of my time.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. I thank the chair and I appreciate his impassioned remarks. I'm bound to say, there are parts of it that I agree with. I didn't remember him being such an opponent of Kenneth Starr when he was before us, but—

Chairman SENSENBRENNER. Would the gentleman yield on that?

Mr. CONYERS. Well, of course.

Chairman SENSENBRENNER. I've opposed the independent counsel statute when it's come before the Committee and allowed it to—voted to allow it to expire in 1992, and you may recall that I didn't bring up a reauthorization of the independent counsel statute because it was a bad law and should be allowed to rest in peace.

Mr. CONYERS. Well, I thank you for that edifying comment. Let us consider the fact, though, that there are independent prosecutors, special prosecutors, and then there are prosecutors named Kenneth Starr and there is a difference. All prosecutors don't operate like Kenneth Starr operated. But I leave that part of our discussion aside.

I turn now to commend the gentlelady from Texas. She is absolutely right. If only the authors of this resolution had consulted her before it was offered, I feel strongly that we would have had nothing in here referring to grand jury information. And so I rise to totally support the amendment that is being offered by the gentlelady from Texas. It perfects the modest request that is before us.

Now, may I remind the Members of this Committee, this is a voluntary request. This is not a subpoena. It's going to three groups. I'm hopeful that if it is reported favorably, that the agencies and

departments that would be involved in responding would honor it. But we're asking them to voluntarily turn over their information. What we do not want is what is the grand jury doing about this. That's none of our business and that's what makes this amendment so important.

So let's all agree here that what we have now is, again quoting the gentlelady from Texas, we have the executive branch investigating the executive branch. Now, this makes little sense to people over the age of 18. I mean, this is not the way we do business in America, is to have a White House problem that is now going to be resolved by the Department of Justice—perish the thought—which is now going to help us find out what happened and how Novak reported this to the world, in effect, that they were outing someone that was working undercover. This is not just a desk job CIA person. This was undercover. This is a heinous offense.

Ms. JACKSON LEE. Absolutely.

Mr. CONYERS. I cannot underestimate the seriousness of this kind of activity. It has to be stopped wherever it is. But for it to have occurred possibly in the White House is unacceptable. It's intolerable. It offends the very sensibilities that make us a democratic nation.

And so all we're asking for are some phone logs, some other information. We want to know nothing about what the grand jury is doing, and that is perfectly—this resolution then is perfectly squarely fitted within the responsibilities of this Committee.

Ms. JACKSON LEE. Would the gentleman yield?

Mr. CONYERS. Yes, ma'am.

Ms. JACKSON LEE. You are so right, Mr. Conyers, first of all, because the language says that anything that would violate the secrecy and integrity of the grand jury proceedings would not be requested by this House and this body.

I'm reminded of the leadership of Chairman Rodino, of which you served on that Committee when, tragically, we engaged in the impeachment of Richard Nixon. It's interesting that it was a bipartisan process. Unfortunately, the last impeachment was not. I cannot imagine that this Committee would abdicate its responsibility for truth for the American people by considering this a political sideshow. It is not.

Chairman SENSENBRENNER. The time of the gentleman from—

Ms. JACKSON LEE. It is an attempt to find the truth. I thank you, Mr. Chairman.

Chairman SENSENBRENNER.—Michigan has expired.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. Let me also note that I agree with the chair in part. I concur in terms of his observations relative to the independent counsel statute. We certainly do not need Ken Starr reappearing, or any resemblance thereof, in front of this Congress. I think we've learned a lesson.

But I think we're missing the point here. I think there's substantial precedent that parallel investigations or parallel inquiries,

whether it be a criminal investigation being conducted by the executive branch or an oversight inquiry being conducted by the legislative branch, are not mutually exclusive. Mr. Nadler in his opening remarks enumerated numerous cases where—that this Congress in the past 10 years have addressed while simultaneously criminal investigations were ongoing.

I think the key issue here is under the current policy, with the existing statutes, do we provide the protection necessary in terms of American policy for our CIA operatives? As I read the newspaper accounts, they vary in terms of what the elements of the statute currently are. They vary in the interpretation of those statutes as to what is required to secure an indictment and to secure a conviction for the disclosure of the identity of a covert operative.

What we have here currently, and again, one only has to review reports coming out in all of the major media outlets, that we have a CIA that is demoralized, we have CIA operatives that are outraged, that express concern, not just for their colleague in this case but for their colleagues elsewhere who are involved in developing intelligence for the protection of the American people.

Now, the chair made a statement early on that we are interfering with a criminal investigation. Let me pose the question, and maybe he or some other Member has heard from the Department of Justice or from Mr. Fitzgerald that an effort by this Committee and this Congress to review the existing policy would somehow interfere with the criminal investigation.

I have heard no basis to lead me to a conclusion that in any way, shape, or form what we would do in our role, exercising our responsibility, would interfere with the ongoing process in terms of the investigation being conducted and supervised by Mr. Fitzgerald. And if the chair or any other Member has heard from anyone in the executive branch, whether it be from Mr. Fitzgerald or from the Department of Justice or from the White House or from anyone, I would like to hear it now.

I think we have an obligation to those operatives who are conducting intelligence efforts all over this globe that the current policy and that the statutes will protect them rather than expose them and their families to physical jeopardy.

You know, the chair earlier raised the issue, and it was, I think, very well stated, regarding Iran-Contra. We are miles away from granting anyone immunity here. This is not that case. This is clearly distinguishable.

And in terms of the criminal investigation, I have no reason to dispute the chair's observation about Mr. Fitzgerald. Recently, there was a press report dated—I have it here in front of me—dated February 4 by United Press and let me quote. “Federal law enforcement officials said that they have developed hard evidence of possible criminal misconduct by two employees of Vice President Dick Cheney’s office related to the unlawful exposure of a CIA officer’s identity last year.”

Chairman SENSENBRENNER. The gentleman’s time has expired.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Mr. Chairman, I yield 1 minute to the gentleman.

Chairman SENSENBRENNER. The gentleman strikes the last word, is recognized for 5 minutes.

Mr. NADLER. And yields 1 minute to the gentleman from Massachusetts.

Mr. DELAHUNT. I thank the gentleman for yielding. Just let me continue to read this report by UPI that was published on February 4 regarding the efforts by Mr. Fitzgerald, because again, I do concur with the statement by the chair that Mr. Fitzgerald appears to be doing his assignment and doing it well.

The report goes on, "The investigation, which is continuing, could lead to indictments, a Justice Department official said. According to these sources, John Hannah and Cheney's Chief of Staff Lewis 'Scooter' Libby, were the two Cheney employees. We believe that Hannah was the major player in this one, one Federal law enforcement officer said. The strategy of the FBI is to make clear to Hannah," and again, let me stress that I'm quoting from this source, "that he faces a real possibility of doing jail time as a way to pressure him to name superiors, one Federal law enforcement official said."

And that is the end of the quote that I had initially presented, and I yield back and I thank the gentleman for yielding.

Mr. NADLER. Thank you. Reclaiming my time, Mr. Chairman, we have to—it may be that Mr. Fitzgerald is doing an excellent job, and I have no reason to doubt that. I do have reason to doubt, substantial reason to doubt, as should we all, that the Administration is being honest in this respect.

It was reported in *The Washington Post* on February 10 in an article entitled, "Bush Aides Testify in Leak Probe" by Mike Allen and Susan Schmidt, said that White House staff are being interviewed by investigators although many are refusing to sign a waiver of their journalistic privilege which would allow the press to disclose who among the Administration claims undercover status.

The President ought to order everyone in the Administration to waive their journalistic privilege. We would then know in 5 minutes who informed Mr. Novak because he would have no privilege. The privilege attaches to people in the White House or the Administration to quote the senior Administration officials who gave the information, who committed the criminal act by giving the name of an undercover CIA agent.

Now, if there are people in the White House who are refusing to sign a waiver of their journalistic privilege, this is not a question of the Fifth Amendment. It is the question of a waiver of a journalistic privilege designed to protect the press here, or designed to allow the press to get sources. The Administration, not the press, ought to order Administration members to sign that waiver so we can get to the bottom of this, and the failure of the Administration to do so tells me that the Administration is not in good faith on this subject and, therefore, is not in good faith with the American people who depend on our intelligence to protect us and whose safety is compromised when undercover CIA agents, especially in this case, an undercover agent working in the area of anti-nuclear proliferation, is exposed.

And people in the White House ought to be doing everything they can to find out who exposed her so that that can be stopped in the future, and instead, they are refusing to sign a waiver of their jour-



nalistic privilege. The President ought to order them to sign that waiver, and this Committee, frankly, ought to urge them, or to urge the Administration to urge its members to require its members to sign a waiver so we can get to the bottom of this immediately.

Thank you. I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentlewoman from Texas, Ms. Jackson Lee——

Ms. SANCHEZ. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California is recognized for 5 minutes.

Ms. SANCHEZ. Thank you, and I'd like to yield to my colleague from Michigan, Mr. Conyers.

Mr. CONYERS. I thank you very much to the gentlelady.

The gentleman from Massachusetts, Mr. Delahunt, referred to the fine qualities of Patrick Fitzgerald, who's a very fine prosecutor. We should stipulate to that, everybody on the Committee.

The problem, however, is that each week that we get closer to this election, the more pressure is put on this fine U.S. Attorney not to report back any indictment, right? Or is somehow he living in some kind of a glass bubble that makes him not feel any pressure whatever as he moves very courageously in his duties?

Now, my friends, what we will ultimately be talking about is whether there should be a special counsel appointed, which speaks to the problems that the Chairman and I agreed existed in the old special prosecutor law that we both allowed to expire. And what we need is someone with no ties to the Department or loyalty to the Administration. The public can have little faith that the investigation will be pursued diligently and impartially under the circumstances that it's now set up to do.

A U.S. Attorney appointed by the Department of Justice and the Administration's White House is now investigating the White House. Fine. I don't think it'll wash.

If it turns out that the White House engaged in an organized smear campaign against former Ambassador Joseph Wilson, including outing his wife, to exact revenge for pointing out the lies in the pre-war Iraq intelligence—I say if—then this would do incalculable harm to the President's credibility and the case for his reelection. That's why I'm not surprised that White House officials recently admitted that their goal was to, quote, "let the earth movers roll in on this one," end quotations, and that on the heels of Mr. Ashcroft's announcement, Republican legal sources acknowledged that the recusal of the Attorney General will have the effect of providing political cover for the Administration if no indictment is issued.

Moreover, the recent assignment of Patrick Fitzgerald contains none of the safeguards against politicalization that comes with the formal appointment of a special counsel. He doesn't have the ability to seek whatever financial resources are needed to pursue the case, as a special counsel would be able to. Mr. Fitzgerald does not have the guarantee that he can be fired only for misconduct, dereliction of duty, incapacity, or other good cause, as in the case with a special counsel. And there is no requirement that the Attorney General provide the public with a written explanation of why any ac-

tion proposed by the prosecutor was not taken, as is specified again in our regulations concerning special counsel.

And so on this important amendment, I urge our colleagues on both sides of the aisle to realize that it is a perfecting amendment. It takes us out of the grand jury dilemma and enables us to proceed with our investigation without any encumbrance whatever. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Does the gentlewoman from California yield back?

Ms. SÁNCHEZ. I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentlewoman from Texas, Ms. Jackson Lee. Those in favor will say aye.

Opposed, no.

The noes appear to have it——

Mr. CONYERS. A record vote——

Chairman SENSENBRENNER. rollcall will be ordered. Those in favor of the Jackson Lee amendment will, as your names are called, answer aye, those opposed no, and the Clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

[No response.]

The CLERK. Mr. Bachus?

[No response.]

The CLERK. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

[No response.]

The CLERK. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Ms. Hart?

Ms. HART. No.

The CLERK. Ms. Hart, no. Mr. Flake?

[No response.]

The CLERK. Mr. Pence?

Mr. PENCE. No.

The CLERK. Mr. Pence, no. Mr. Forbes?

[No response.]

The CLERK. Mr. King?

Mr. KING. No.

The CLERK. Mr. King, no. Mr. Carter?

Mr. CARTER. No.  
The CLERK. Mr. Carter, no. Mr. Feeney?  
[No response.]  
The CLERK. Mrs. Blackburn?  
Mrs. BLACKBURN. No.  
The CLERK. Mrs. Blackburn, no. Mr. Conyers?  
Mr. CONYERS. Aye.  
The CLERK. Mr. Conyers, aye. Mr. Berman?  
[No response.]  
The CLERK. Mr. Boucher?  
[No response.]  
The CLERK. Mr. Nadler?  
Mr. NADLER. Aye.  
The CLERK. Mr. Nadler, aye. Mr. Scott?  
[No response.]  
The CLERK. Mr. Watt?  
[No response.]  
The CLERK. Ms. Lofgren?  
[No response.]  
The CLERK. Ms. Jackson Lee?  
Ms. JACKSON LEE. Aye.  
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?  
[No response.]  
The CLERK. Mr. Meehan?  
[No response.]  
The CLERK. Mr. Delahunt?  
[No response.]  
The CLERK. Mr. Wexler?  
Mr. WEXLER. Aye.  
The CLERK. Mr. Wexler, aye. Ms. Baldwin?  
Ms. BALDWIN. Aye.  
The CLERK. Ms. Baldwin, aye. Mr. Weiner?  
[No response.]  
The CLERK. Mr. Schiff?  
Mr. SCHIFF. Pass.  
The CLERK. Mr. Schiff, pass. Ms. Sánchez?  
Ms. SÁNCHEZ. Aye.  
The CLERK. Ms. Sánchez, aye. Mr. Chairman?  
Chairman SENSENBRENNER. No.  
The CLERK. Mr. Chairman, no.  
Chairman SENSENBRENNER. Are there Members in the chamber who wish to cast or change their votes? The gentleman from North Carolina, Mr. Coble?  
Mr. COBLE. No.  
The CLERK. Mr. Coble, no.  
Chairman SENSENBRENNER. The gentleman from California, Mr. Gallegly?  
Mr. GALLEGLY. No.  
The CLERK. Mr. Gallegly, no.  
Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon?  
Mr. CANNON. No.  
The CLERK. Mr. Cannon, no.  
Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green?

Mr. GREEN. No.  
 The CLERK. Mr. Green, no.  
 Chairman SENSENBRENNER. The gentleman from Alabama, Mr. Bachus?  
 Mr. BACHUS. No.  
 The CLERK. Mr. Bachus, no.  
 Chairman SENSENBRENNER. The gentleman from Florida, Mr. Feeney?  
 Mr. FEENEY. No.  
 The CLERK. Mr. Feeney, no.  
 Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? The gentleman from California, Mr. Schiff?  
 Mr. SCHIFF. Aye.  
 The CLERK. Mr. Schiff, aye.  
 Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Meehan?  
 Mr. MEEHAN. Aye.  
 The CLERK. Mr. Meehan, aye.  
 Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? If not, the Clerk will report.  
 The CLERK. Mr. Chairman, there are 8 ayes and 17 noes.  
 Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments?  
 Ms. JACKSON LEE. Mr. Chairman, I have two amendments that I'd like to take en bloc. The first amendment is JCAM1——  
 Chairman SENSENBRENNER. The clerk will report the amendments.  
 Ms. JACKSON LEE.—and the second one is 105 XML, Jackson Lee.  
 The CLERK. Amendments to H. Res. 499 offered by Ms. Jackson Lee en bloc. Page two——  
 The amendments follow:]

**AMENDMENT TO H. RES 499****OFFERED BY M**\_\_ . \_\_\_\_\_

Page 2, line 20, insert before the period at the end the following: “, except that, in the case of such documents in the possession of the Attorney General, only those documents that the Federal official appointed to carry out the criminal investigation of the Department of Justice into the disclosure of Ms. Valerie Plame as an employee of the Central Intelligence Agency determines would not interfere with that investigation”.

**AMENDMENT TO H. RES 499**  
**OFFERED BY MS. JACKSON-LEE**

Page 2, line 6, insert “and records of discussions with journalists and other members of the media” after “records of internal discussions”.

Page 2, line 17, insert “and records of discussions with journalists and other members of the media” after “records of internal discussions”.

Chairman SENSENBRENNER. Without objection, the amendments will be considered en bloc. Without objection, the amendments en bloc will be considered as read and the gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. I thank the Chairman very much. Mr. Chairman, I want to thank the Committee Members very much for their indulgence.

I think a simple premise should be put before this Committee and before the American people and this House, and that is as we sit here, firm in our safety, young men and women are on the front lines in Iraq losing their lives. The representation to the American people was simply that this nation was under imminent threat and that the Iraqi government possessed weapons of mass destruction.

When Ambassador Wilson provided the truth to a representation made by this Administration later that there was no connection between the nation of Niger and the selling of uranium, that, Mr. Chairman, was a direct, if you will, challenge to the representation and the basis upon sending young men and women into harm's way.

Today, we ask this constitutional body, the Judiciary Committee, the preserver of the Constitution, to look carefully at an independent investigation of this matter, the uncovering, if you will, of a covert operative, which by the very existence of that action by Robert Novak has now jeopardized covert agents around the world, CIA agents who have put their lives on the line so that we might be safe.

I am saddened by the debate that has occurred here and I must take issue, Mr. Chairman, with any suggestion of a political sideshow, because I recall, though I did not have the opportunity to be in this Committee room during the impeachment proceedings of Richard F.—Richard Nixon, Milhous Nixon, I am assured, however, of the respect that was given to that process by those who were in this room.

I'm also well aware that while simultaneous executive investigations were going on regarding campaign finance reform and, as well, the Waco incident, that this Congress and this Committee were taking advantage of their responsibility and investigating.

The two amendments that I have would answer your question. The first one, of course, dealing with information where the prosecutor would be able to determine what documents came to this House, would protect the integrity of the prosecutor. The second one specifically requires that this Committee receive information about discussions with journalists and other members of the media, recognizing the First Amendment privilege, but it would allow us to review those documents just as those in the media review them.

The crux of this issue is that someone in the Administration leaked the covert identity of this young woman, this patriot, this person who was trying to provide for the safety of this nation. I am not going to allow and should not, I believe—we should not allow the counsel of Mr. Fitzgerald, of which I do not challenge his integrity or his ability to do his job, but we should not abdicate our responsibilities in this House of doing our job.

I cannot imagine, Mr. Chairman, why this Committee would not want to join together in a bipartisan manner to support these

amendments and report favorably this resolution. I'd ask my colleagues to do so, and I yield back the balance of my time.

Chairman SENSENBRENNER. I recognize myself for 5 minutes in opposition to the amendments en bloc.

There are two amendments that the gentlewoman from Texas has proposed. The first amendment says that Mr. Fitzgerald, who is the designated prosecutor in this matter, can refuse to turn over materials to the Congress that would interfere with the investigation. That puts Mr. Fitzgerald in a terrible position, because in effect what he is saying is that every document or every piece of evidence that he has obtained is relevant to the investigation. If he comes back with a letter saying that everything is relevant to the investigation and turning them over would be an interference, particularly with the provisions of rule 6(e) of the Federal Rules of Criminal Procedure on grand jury secrecy, and if he says he won't turn over anything, then we're going to hear allegations that he's not objective and that he's stonewalling.

I don't think we should put this man, whom everybody seems to have a great deal of trust and faith in, in that kind of a position where a determination on which materials would interfere with the investigation and which would not end up becoming a political issue. He would then have to either state which materials he's not turning over because it would interfere with the investigation, and there's where rule 6(e) comes in, because if he talks about materials that the grand jury is doing, then the prosecutor has violated rule 6(e) and can be prosecuted himself. So don't put Mr. Fitzgerald in this position.

The second part of the amendments en bloc that have been offered by the gentlewoman from Texas requires people in the White House staff and in the Department to turn over records of discussions with journalists and other members of the media, and that puts a chilling effect on anybody in the executive branch from talking with journalists.

Now, I don't condone a leak and I don't condone a criminal violation of material that is leaked. But I don't think we should have a broad brush and say every time somebody talks to a journalist to give them information on what their position is or what they're doing or what the position of the Administration is, that that may end up being the subject of a resolution of inquiry.

In order for the press to operate properly, they have to be able to seek out from whatever sources they feel are relevant information that they need in order to give that information to the public. To have a chilling effect put on any Government official as a result of an amendment to a resolution of this nature, I think will not allow the press to do their job in the way that the Framers of the First Amendment expected the press to do so. So vote against the amendments en bloc—

Ms. JACKSON LEE. Would the gentleman yield?

Chairman SENSENBRENNER.—and I yield back the balance of my time.

Ms. JACKSON LEE. Mr. Chairman, would you yield?

Chairman SENSENBRENNER. The question is on adoption of the amendments en bloc. Those in favor will say—

Mr. NADLER. Mr. Chairman?



Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you. I strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you. I yield to the gentlelady from Texas.

Ms. JACKSON LEE. I thank the distinguished gentleman very much and I will attempt in this very august room to be brief.

But I would just simply say to the Chairman and to my colleagues, far be it from me to institute any chilling effect from the verbosity of the Administration and their willingness to be open to the American public and to highlight any of their ills and sins in the national media. Any time that they want to do a mea culpa and have a press conference, I'd be willing to stand aside and allow them to do so. What I'm arguing for, however, is that we need to know the truth of the principals who are engaged in leaking a disastrous statement about the uncovering of a covert agent.

In addition, the amendment regarding the prosecutor, it is respecting Mr. Fitzgerald's integrity by allowing him to determine what documents we would receive.

It is frivolous to suggest that in this Congress, only Republicans can investigate Democrats and Democrats cannot investigate Americans. We must do this together on behalf of the American people.

I remind you, 540 are dead and more are dying in Iraq. The basis upon which they went was the existence, as represented by this Administration, of weapons of mass destruction. No, this is not the Armed Services Committee. It is not the Intelligence Committee. It is not even the International Relations Committee. It is the Justice Committee, judiciary, where the Constitution has to be protected. We're not protecting it today. We are now skating over the facts that the Administration has violated the sanctity and trust of a covert agent that now jeopardizes not only her life, but the lives of those who depended upon her information and her work.

I am simply asking that we amend this resolution to draw us together in a bipartisan way, and Mr. Chairman, I would ask you, is there any way that the Republicans of this particular Committee would work with us in a bipartisan manner to achieve what is necessary, an independent investigation by this body, the United States Congress?

I cannot imagine that we have just gone through an impeachment of a President of the United States on his sexual activities that the American people said they did not want. Now the American people have asked the question, who made the representations of weapons of mass destruction, and, of course, why we would engage in the uncovering of an innocent CIA agent trying to protect our sanctity and our security. I cannot imagine why these amendments would not be credible and legitimate and the resolution of this default would not come from this Committee in a favorable posture.

I'd ask my colleagues to support these amendments and I'd ask my colleagues to ask themselves and to address their conscience as to how they could sit here in this room and show such a lack of responsibility for the respect of this body and this Congress, that we would not allow ourselves to, in a parallel manner, investigate

this process with the integrity of these amendments that we've asked to give the U.S. Attorney every opportunity to do his job.

I thank Mr. Nadler and I would be happy to yield back to him.

Mr. NADLER. Thank you. I thank the gentlelady. I support her amendment as I support this resolution, for the obvious reasons that we have stated before. There must be an independent investigation of this continuing cover-up by the Administration. I say cover-up because if they weren't covering it up, they would have told the members of the Administration to waive the journalistic privilege and we would have had the answer to this question of who endangered lives of American agents by outing an existing CIA agent. We would have had that answer in 5 minutes flat.

So I support this amendment. I support the resolution. I yield back.

Chairman SENSENBRENNER. The question is on agreeing to the amendments—

Mr. SCHIFF. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, Mr. Schiff?

Mr. SCHIFF. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCHIFF. Mr. Chairman, Members, I think that the passage of H. Res. 499 is extraordinarily important, not only in its own right, not only to determine the facts surrounding the disclosure of a CIA officer's name, but also because of the context that we find ourselves in, the context in which we have gone to war in Iraq on the basis of intelligence about the possession of weapons of mass destruction that we have not as yet found and may never find.

And in the face of these circumstances, when an allegation has been raised that even in its own right the disclosure of an agent's identity, an officer's identity for political purposes, to chill the disclosure of information that would cause question about a claim made in the State of the Union is extraordinarily important.

There are two questions that are involved in this case of the disclosure of Ms. Plame. The first is, has a crime been committed, and the second is, what steps should Congress take to protect the identity of its agents and the sanctity of the intelligence gathering process from political influence, intimidation, or manipulation.

These are two very different questions and they cannot be answered by the same source. It is Mr. Fitzgerald's job as a special counsel to answer the first question, has a crime been committed. It is the Congress's responsibility to answer the second question, what steps should we take to ensure the sanctity of our intelligence gathering process and protect the identity of our agents.

Mr. Fitzgerald cannot undertake the second task. We cannot seek an indictment in response to the first question. But rather, these are separate functions, and I am sure, having come from the Justice Department myself, that if it were solely left to the Justice Department or Mr. Fitzgerald, they would prefer a Congressional investigation not take place. They would prefer to focus on their sole jurisdiction of determining whether a crime has been committed.

As a former prosecutor, I never welcomed other investigations by other bodies which in some way could influence or direct my own, but that was because I had a job to do that I was focused on.

We in Congress also have the job to do that we need to focus on and the two are not mutually incompatible. We need to get to the bottom of the facts concerning the disclosure of this officer's identity so that we can begin the extraordinarily important process of identifying the flaws that we have in our intelligence gathering, the flaws that we may have in the analysis of that intelligence, and a determination about how our intelligence is used, whether good information is being suppressed for motivations that have nothing to do with the best interests of the country.

It is difficult to comprehend a more important task for the Congress at this time, and in light of that, we ought to proceed on dual tracks. We ought to investigate whether a crime has been committed and bring charges if it has. That is an extraordinarily difficult task, particularly given the code sections involved here, particularly given the fact that some of the source of the disclosure came from the media. The odds in favor of prosecution are not high. And under those circumstances, we cannot rely solely on the deterrent value of an indictment and conviction.

We must undertake our own investigation, draw our own policy conclusions, and implement the results, and without prejudging what conclusion we will reach or where the facts may lead us, it is fair to say that this is an extraordinarily important undertaking. It could not have been made more important by the events of the last several months and by the conclusions of Dr. Kay and others that we were all wrong.

It is our job in this body to find out why we are wrong. It's our job in this body to find out whether agents that were in a position to provide contrary information were being intimidated, whether all the facts have bubbled to the surface that should have come before the Congress in making the decisions we have made.

And for all of these reasons, I urge my colleagues to lend their support to H. Res. 499. We should not be afraid of the facts. We should not be afraid of following them to their logical conclusion and I urge your support and yield back the balance of my time.

Chairman SENSENBRENNER. The question is on agreeing to the amendments——

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. I thank the Chairman and let me do a couple of things in the 5 minutes. First of all, I missed the vote on Ms. Jackson Lee's prior amendment and I would ask unanimous consent that it appear in the record that had I been able to be here and vote, I would have supported her amendment.

Chairman SENSENBRENNER. The complete transcript of the hearing or the markup is contained in the Committee report, which will include the statement that the gentleman from North Carolina just made. I think that should suffice.

Mr. WATT. Yes. That's all I was asking for. Unfortunately, there are two markups going on on the two Committees that I am a Member of and they're forcing me to be in two different places at one time.

On the substance of this amendment and the underlying bill, I would have to say that the amendment obviously addresses some of the concerns that I have about the underlying bill. I share many of the concerns that the Chairman expressed in his opening statement about our jeopardizing an investigation, and I guess it's because I come from a background that suggests to me that any external influence in an investigation, prosecution, and court determination of guilt or innocence is inappropriate, and I have had that reservation as we have on prior occasions in this Committee and in the Congress in other Committees injected ourselves into issues that were under active criminal investigation and prosecution.

I have come to grips on those prior occasions, and over time, with the notion that Mr. Schiff just expressed, and that is that we have a parallel responsibility to oversee and set policy that sometimes requires information that is the subject of ongoing investigations, and so we have to exercise that responsibility, too.

I think the reservation I still have is that sometimes when we get the information over here to do our, fulfill our responsibility of legislating and setting policy, we treat it not with the kind of confidentiality that the legal system treats it with and we should be able to get sensitive information, as the Intelligence Committee does, and privileged information, as we as a Judiciary Committee should get, and be able to maintain the confidentiality and do our job. I have seen instances in which we are not fulfilling our responsibilities to maintain the confidentiality of information and it has, on occasion, jeopardized prosecutions or resulted in reversals of prosecutions on some occasions.

So I think I come down pretty much where Mr. Schiff does on this, despite reservations. I just wish we would—all of us would apply the same kind of analysis whether a Democratic administration or a Republican administration were in place, and I applaud the Chairman at least for having been consistent in his views about the special counsel legislation, but I think there are a number of instances in which we have not exercised that same kind of consistency and it gives us, gives the world the impression, the nation the impression that we are being political in these deliberations rather than applying a uniform principle.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. WATT. I yield back.

Chairman SENSENBRENNER. The question is on the amendments en bloc offered by the gentlewoman from Texas, Ms. Jackson Lee. Those in favor will say aye. Opposed, no. The noes appear to have it. The noes have it and the amendments are not agreed to.

Are there further amendments?

[No response.]

Chairman SENSENBRENNER. If there are no further amendments, a reporting quorum is present. The question is on the motion to report H. Res. 499 adversely. Those in favor will signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it—the gentleman from New York.

Mr. NADLER. I request the ayes and nays.

Chairman SENSENBRENNER. The yeas and nays are requested and will be ordered. Those in favor of reporting H. Res. 499 adversely will, as your names are called, answer aye, those opposed, no, and the Clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith?

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon?

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye. Mr. Bachus?

Mr. BACHUS. Aye.

The CLERK. Mr. Bachus, aye. Mr. Hostettler?

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye. Mr. Green?

[No response.]

The CLERK. Mr. Keller?

Mr. KELLER. Aye.

The CLERK. Mr. Keller, aye. Ms. Hart?

Ms. HART. Aye.

The CLERK. Ms. Hart, aye. Mr. Flake?

Mr. FLAKE. Aye.

The CLERK. Mr. Flake, aye. Mr. Pence?

Mr. PENCE. Aye.

The CLERK. Mr. Pence, aye. Mr. Forbes?

[No response.]

The CLERK. Mr. King?

Mr. KING. Aye.

The CLERK. Mr. King, aye. Mr. Carter?

Mr. CARTER. Aye.

The CLERK. Mr. Carter, aye. Mr. Feeney?

Mr. FEENEY. Aye.

The CLERK. Mr. Feeney, aye. Mrs. Blackburn?

[No response.]

The CLERK. Mr. Conyers?

[No response.]

The CLERK. Mr. Berman?

[No response.]

The CLERK. Mr. Boucher?

[No response.]

The CLERK. Mr. Nadler?

Mr. NADLER. No.

The CLERK. Mr. Nadler, no. Mr. Scott?  
 [No response.]  
 The CLERK. Mr. Watt?  
 Mr. WATT. No.  
 The CLERK. Mr. Watt, no. Ms. Lofgren?  
 [No response.]  
 The CLERK. Ms. Jackson Lee?  
 [No response.]  
 The CLERK. Ms. Waters?  
 [No response.]  
 The CLERK. Mr. Meehan?  
 Mr. MEEHAN. No.  
 The CLERK. Mr. Meehan, no. Mr. Delahunt?  
 [No response.]  
 The CLERK. Mr. Wexler?  
 Mr. WEXLER. No.  
 The CLERK. Mr. Wexler, no. Ms. Baldwin?  
 [No response.]  
 The CLERK. Mr. Weiner?  
 [No response.]  
 The CLERK. Mr. Schiff?  
 [No response.]  
 The CLERK. Ms. Sánchez?  
 Ms. SÁNCHEZ. No.  
 The CLERK. Ms. Sánchez, no. Mr. Chairman?  
 Chairman SENSENBRENNER. Aye.  
 The CLERK. Mr. Chairman, aye.  
 Chairman SENSENBRENNER. Members in the chamber who wish to cast or change their vote? The gentleman from California, Mr. Gallegly?  
 Mr. GALLEGLY. Aye.  
 The CLERK. Mr. Gallegly, aye.  
 Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green?  
 Mr. GREEN. Aye.  
 The CLERK. Mr. Green, aye.  
 Chairman SENSENBRENNER. Further Members who wish to cast or change their vote? The gentleman from California, Mr. Schiff?  
 Mr. SCHIFF. No.  
 The CLERK. Mr. Schiff, no.  
 Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.  
 Mr. DELAHUNT. No.  
 The CLERK. Mr. Delahunt, no.  
 Chairman SENSENBRENNER. Anybody else who wishes to cast or change their vote? If not——  
 Mr. NADLER. Mr. Chairman?  
 Chairman SENSENBRENNER. The gentleman from New York.  
 Mr. NADLER. Mr. Chairman, how am I recorded, please?  
 Chairman SENSENBRENNER. How is Mr. Nadler recorded?  
 The CLERK. Mr. Chairman, Mr. Nadler is recorded as no.  
 Mr. NADLER. Mr. Chairman, that is correct.  
 Chairman SENSENBRENNER. Good.  
 Ms. SÁNCHEZ. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers?

Mr. CONYERS. Aye—no.

The CLERK. Mr. Conyers, no.

Ms. SÁNCHEZ. Mr. Chairman, may I inquire how I am recorded?

Chairman SENSENBRENNER. How is the gentlewoman from California, Ms. Sánchez, recorded?

The CLERK. Mr. Chairman, Ms. Sánchez is recorded as a no.

Chairman SENSENBRENNER. Did she make a mistake?

Ms. SÁNCHEZ. No. That is correct, Mr. Chairman.

Chairman SENSENBRENNER. Okay. Further Members who wish to cast or change their vote? If not, the Clerk will report.

The CLERK. Mr. Chairman, there are 17 ayes and 8 noes.

Chairman SENSENBRENNER. And the motion to report adversely is agreed to. Without objection, the staff is directed to make any technical and conforming changes. All Members will be given 2 days as provided by the House rules in which to submit additional dissenting supplemental or minority views.

Let me bring to the attention of the Members that the referral of this resolution expires on Friday, so that means that the additional dissenting supplemental or minority views will have to be submitted by Friday since we must file the Committee report by the close of business on that day.

The chair thanks the Members for their participation and the Committee stands adjourned.

[Whereupon, at 11:22 a.m., the Committee was adjourned.]





## DISSENTING VIEWS

We strongly dissent from the majority's unfavorable reporting of H. Res. 499. We are shocked by this Committee's abdication of its oversight role of the Department of Justice (DOJ).

For months we have been aware of a shocking and shameful incident. In an effort to build the case for preemptive war, the President declared in his 2003 State of the Union address that Iraq had tried to buy uranium from Niger, even after former Ambassador Joseph Wilson, IV, informed the Administration this was not true. In an attempt to intimidate Wilson and others who might tell the truth about the war, high ranking administration officials started shopping around classified information to reporters—the fact that his wife is a CIA operative, along with her name.

The leak of Valerie Plame's name and undercover status jeopardized not only her life, but the lives of all those she worked with over decades of service to our country. We can think of very few situations that more strongly call for Congressional oversight. This incident needs our immediate attention not only to get to the bottom of who leaked Plame's status, but to determine whether the White House and the Justice Department properly guarded this information in the first place and took appropriate steps to remedy the leak in its aftermath.

### 1. HISTORY OF THE LEAK

In February 2002, former ambassador Joseph Wilson, IV, was sent to Niger by the CIA, on behalf of the Bush administration, to investigate claims that Iraq was attempting to buy yellow cake uranium in that country.<sup>1</sup> When Wilson returned, he informed the CIA and the State Department that the claims were unsubstantiated.<sup>2</sup>

Nearly a year later, the President stated that Iraq tried to purchase uranium in Africa during his State of the Union address: "The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa."<sup>3</sup> In response, Wilson published an op-ed in July 2003 publicizing his findings, or lack thereof.<sup>4</sup> Approximately 2 weeks later, journalist Robert Novak used his widely syndicated column to defend the Administration's choice to invade Iraq and call Wilson's credibility into question.<sup>5</sup> Painting Wilson's assignment to Niger as a favor to Wilson's wife, Novak stated, "Wilson never worked for the CIA, but his wife, Valerie Plame, is an Agency operative on weapons of mass

<sup>1</sup>Mike Allen and Dana Priest, *Bush Administration is Focus of Inquiry*, WASH. POST, Sept. 28, 2003 at A1. Wilson was a diplomat for 22 years and served as President Clinton's director of African affairs on the National Security Council.

<sup>2</sup>*Id.*

<sup>3</sup>President George W. Bush, State of the Union, (January 28, 2003).

<sup>4</sup>Joseph C. Wilson, IV, *What I didn't Find in Africa*, July 6, 2003.

<sup>5</sup>Robert Novak, *Mission to Niger*, July 14, 2003.

destruction. Two senior administration officials told me Wilson's wife suggested sending him to Niger to investigate . . ."<sup>6</sup> It was soon revealed that those administration officials called at least six members of the press to disseminate Plame's undercover identity.<sup>7</sup> Inside sources and most commentators suspect that the motivation was "revenge" for publicly discrediting the President's main justification for invading Iraq and an attempt to preemptively silence other whistle blowers.<sup>8</sup>

The CIA responded immediately, and contacted the DOJ four times in the span of 3 weeks to notify the Department that the disclosure of Plame's name and status probably violated the law and to request an investigation.<sup>9</sup> On September 29, over a month after the CIA first notified the DOJ, the Department confirmed that the FBI would be investigating the leak.

At first, the President appeared committed to cooperating with the investigation and tracing the leak to its source: ". . . if there is a leak out of my administration, I want to know who it is . . . I welcome the investigation."<sup>10</sup> However, the administration's tone changed quickly. No longer making blanket statements about the innocence of his staff, the President turned to narrow legalisms, instead claiming that no one had technically broken the law.<sup>11</sup> Eventually the President appeared completely resigned to the idea that the investigation would be fruitless: "I don't know if we're going to find out the senior administration official . . . Now this is a large administration, and there's a lot of senior officials. I don't have any idea."<sup>12</sup>

These statements appeared to effect the progress of the investigation. An F.B.I. official commented that "It wouldn't surprise me if we went a little bit slower on this one just because it is so high profile. This will get scrutinized at our headquarters and at Justice in a way that lesser, routine investigations wouldn't."<sup>13</sup> That prophecy was fulfilled, and in the words of a senior White House official the investigation was stalled: "We have let the earth-movers roll in over this one."<sup>14</sup>

This lack of outrage by the Administration and lack of zeal on the part of the Justice Department were not the only disconcerting factors in the investigation. Instead, the first 3 months of the investigation were fraught with apparent conflicts of interests and procedural irregularities.

<sup>6</sup> *Id.*

<sup>7</sup> See *supra* note 2.

<sup>8</sup> David Johnston, "Top Bush Aide is Questioned in CIA Leak," N.Y. Times, Feb. 10, 2004 at A1 (" . . . prosecutors have cited evidence that White House officials were extremely upset by Mr. Wilson's article and were angry at the CIA for sending him to Africa . . ."); Mike Allen and Dana Priest, "Bush Administration is Focus of Inquiry," Wash. Post, Sept. 28, 2003 at A1 ("Clearly, it was meant purely and simply for revenge.").

<sup>9</sup> Letter from Stanley M. Mosowitz, Director of Congressional Affairs to John Conyers, Jr., Ranking Member of the House Judiciary Committee, (Jan. 30, 2004) available at [http://www.house.gov/judiciary\\_democrats/cialeakinforesp13004.pdf](http://www.house.gov/judiciary_democrats/cialeakinforesp13004.pdf).

<sup>10</sup> Dana Milbank and Susan Schmidt, *Justice Department Launches Criminal Probe of Leak*, WASH. POST, Oct. 1, 2003 at A1.

<sup>11</sup> Dana Milbank and Mike Allen, *Outside Probe of Leaks Is Favored*, WASH. POST, Oct. 2, 2003.

<sup>12</sup> Dana Milbank, "No Idea" About Leak Inquiry, WASH. POST, Oct. 8, 2003.

<sup>13</sup> Richard Stevenson and Eric Lichtblau, *White House Looks to Manage Fallout Over CIA Leak Inquiry*, N.Y. TIMES, Oct. 2, 2003.

<sup>14</sup> James Harding, *The Agent's Tale*, FINANCIAL TIMES, Dec. 5, 2003.

On December 31, 2003, the Attorney General recused himself from the investigation and Patrick Fitzgerald, the U.S. Attorney in Chicago, was appointed to head the efforts. Recent press reports confirm that White House staff are being interviewed by investigators, although many are refusing to sign a waiver of their journalistic privilege, which would allow the press to disclose who among the Administration leaked Plame's undercover status.<sup>15</sup> It has also been confirmed that investigators are presenting evidence to a grand jury. Press reports include Ari Fleischer, Karl Rove, Scott McClellan, Mary Matalin and other Presidential and Vice Presidential staffers among those who have testified.<sup>16</sup> It is also an open question whether the Administration Officials are invoking their Fifth Amendment right against self-incrimination.

There are several instances of personal bias in this situation that are more than apparent. For example, Karl Rove, political advisor to the President, was named by several sources as an instigator of the leak.<sup>17</sup> He worked on Attorney General Ashcroft's campaigns throughout the 1980's and 90's raking in nearly three-quarters of a million dollars in fees.<sup>18</sup> While at first blush, it might appear that the Attorney General wouldn't be involved with the investigation on a regular basis, Associate Deputy Attorney General Christopher Wray testified before the Senate Judiciary Committee that he regularly briefs the AG on the investigation.<sup>19</sup> These conflicts existed not only between the Attorney General and likely targets of the investigation, but between lower level investigators and the President. Robert McCallum, the Assistant Attorney General who initially oversaw the investigation is an old friend of the President's from Yale.<sup>20</sup> Also, James Comey, Jr., the Deputy Attorney General and in charge of the investigation since Attorney General Ashcroft recused himself, is extremely close with Mr. Fitzgerald. In fact, Mr. Fitzgerald is the godfather of Mr. Comey's child.<sup>21</sup>

There have also been a number of procedural irregularities that beg the question of whether the investigation has always been pursued with due diligence. For example, the DOJ waited 3 days before notifying the White House of the Investigation, and the White House in turn waited 11 hours before asking all staff to preserve any evidence.<sup>22</sup> What evidence that employees have turned over have been screened for "relevance" by White House counsel, perhaps filtering out critical information.<sup>23</sup> And as to the pace of the investigation, FBI sources were quoted as saying that the Department was "going a bit slower on this one because it is so high-pro-

<sup>15</sup> Mike Allen and Susan Schmidt, *Bush Aides Testify in Leak Probe*, WASH. POST, Feb. 10, 2004 at A1.

<sup>16</sup> *Id.*; Johnston, *supra* note 8.

<sup>17</sup> Joseph Wilson, *Nightline* (ABC television broadcast, Sept. 30, 2003) ("I just got off the phone with Karl Rove. He tells me your wife is fair game."); NEWSWEEK, Oct. 13, 2003 (reporting that Chris Matthews of MSNBC's *Hardball* was the journalist contacted by Rove.)

<sup>18</sup> Michael Duffy, *Leaking With a Vengeance*, TIME, Oct. 5, 2003.

<sup>19</sup> Eric Litchblau, N.Y. TIMES, Oct. 22, 2003.

<sup>20</sup> Richard B. Schmitt and Edwin Chen, *Leak Inquiry Embarks on a Long Road*, L.A. TIMES, Oct. 2, 2003 at 14.

<sup>21</sup> David Von Drehle and Dan Eggen, *Head of Leak Probe is Called Relentless*, WASH. POST, Jan. 1, 2004.

<sup>22</sup> Editorial, *Investigating Leaks*, N.Y. TIMES, Oct. 2, 2003.

<sup>23</sup> Richard Stevenson and Eric Lichtblau, *Leaker May Remain Elusive Bush Suggests*, N.Y. TIMES, Oct. 8, 2003.

file.”<sup>24</sup> For many, all these factors have worked in tandem to create at the very least the appearance of impropriety warranting some sort of independent investigation.

This litany of factors has led nearly all commentators not associated with the Administration nor the Republican party to call on Attorney General Ashcroft to appoint a special counsel. Federal regulations provide that a special counsel should be appointed to a criminal investigation when there is a conflict of interest within the DOJ and public interest would be served by an impartial prosecutor.<sup>25</sup> Special counsels must come from outside the Federal Government,<sup>26</sup> ensuring that they are not beholden to anyone they may have to investigate. Once appointed, a special counsel gets extraordinary leeway to conduct an investigation as he or she sees fit. For example, a special counsel is not subject to day-to-day oversight by the DOJ,<sup>27</sup> and in fact can only be dismissed for cause.<sup>28</sup> Perhaps most importantly, once a special counsel makes a recommendation to the Attorney General, the latter must formally explain his reasons if he chooses not to follow it.<sup>29</sup> Because Mr. Fitzgerald is not a special counsel under the regulations, nor can he be since he comes from within the Federal Government, none of these safeguards exist.

Despite repeated requests for a special counsel from members of both the House and the Senate, none has been appointed to date. In fact, all attempts by Democratic members of this Committee to exercise their oversight authority in less intrusive manners than a Resolution of Inquiry have failed. On September 29, 2003, Ranking Member John Conyers, Jr. requested a staff briefing from the DOJ.<sup>30</sup> Attorney General Ashcroft did not respond. On October 30, 2003, every democratic member requested a full committee hearing from Chairman Sensenbrenner, which was denied.<sup>31</sup> As these intermediate options were ruled out, this Resolution of Inquiry became ever more appropriate.

## 2. WHOEVER LEAKED THE INFORMATION MOST LIKELY VIOLATED FEDERAL LAW

There are at least two possible Federal crimes that may have been committed by whoever in the Administration leaked Plame’s undercover CIA status. First, the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421) provides for fines and 10 years imprisonment for anyone who: 1) intentionally discloses information identifying an undercover agent, 2) knowing that the disclosure will reveal the agent as such, when 3) the United States is taking affirmative measures to conceal the agent’s intelligence relationship to the U.S.

<sup>24</sup> Richard Stevenson and Eric Lichtblau, *Attorney General is Closely Linked to Inquiry Figures*, N.Y. TIMES, Oct. 2, 2003.

<sup>25</sup> 28 C.F.R. 600.1.

<sup>26</sup> 28 C.F.R. 600.3.

<sup>27</sup> 28 C.F.R. 600.7(b).

<sup>28</sup> 28 C.F.R. 600.7(d).

<sup>29</sup> 28 C.F.R. 600.9(a)(3).

<sup>30</sup> Letter from John Conyers, Jr., Ranking Member of House Judiciary Committee to Attorney General John D. Ashcroft, (Sept. 29, 2003) available at [http://www.house.gov/judiciary\\_democrats/agleakcianalettr92903.pdf](http://www.house.gov/judiciary_democrats/agleakcianalettr92903.pdf).

<sup>31</sup> Letter from John Conyers, Jr., Ranking Member of the House Judiciary Committee, to the Honorable F. James Sensenbrenner, Jr., Chairman, House Judiciary Committee (Oct. 30, 2003) available at [http://www.house.gov/judiciary\\_democrats/cialeakltr103003.pdf](http://www.house.gov/judiciary_democrats/cialeakltr103003.pdf).

Administration Officials may also have violated 18 U.S.C. 793, which prohibits the gathering, transmitting or losing defense information. This law prohibits communicating national defense information that the possessor has reason to believe could be used to the injury of the United States.<sup>32</sup> It also criminalizes the leaking of information relating to the national defense through gross negligence,<sup>33</sup> and imposes an affirmative duty to report a leak when discovered.<sup>34</sup> It is important to note that information need only “relate to” the national defense, and that the leaker need not intentionally share the information to violate this provision.

### 3. THE MAJORITY’S CONCERNS ARE UNFOUNDED IN LAW OR PRECEDENT

#### A. *This request would not interfere with the Justice Department’s ongoing criminal investigation.*

The majority argued during the markup that the DOJ is handling the investigation properly and that Congressional intervention at this point would jeopardize the criminal investigation. Despite claims to the contrary, there is long standing precedent for this committee to conduct oversight concurrently with an ongoing DOJ investigation:

- In 1997 the Committee held hearings on campaign improprieties in the 1996 presidential election. The Justice Department was conducting its own investigation and determining whether an independent counsel was warranted. In addition to taking testimony from Attorney General Janet Reno, the Committee requested all documents, including deliberative memoranda, relating to the appointment of a special counsel. The DOJ provided many of these documents to the Committee.<sup>35</sup>
- In 1995, the Subcommittee on Crime heard 12 days of testimony as part of a congressional investigation to Federal ac-

<sup>32</sup>“(d) Whoever, lawfully having possession of . . . information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully . . . causes [or attempts to cause] to be communicated, delivered, or transmitted . . . to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any . . . information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts [to do so] . . . to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or . . .”

<sup>33</sup>“(f) Whoever, being entrusted with or having lawful possession or control of any . . . information, relating to the national defense,

(1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or . . .”

<sup>34</sup>“(2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer . . .” may be imprisoned for up to 10 years and be subject to a fine.

<sup>35</sup>*Oversight of the Department of Justice: Hearing Before the House Committee on the Judiciary*, 105th Cong. (1997); Letter from the Honorable Henry J. Hyde, Chairman of the House Committee on the Judiciary to Attorney General Janet Reno (July 24, 1998) available at <http://www.house.gov/judiciary/072498.htm>; Letter from the Honorable Henry J. Hyde, Chairman of the House Committee on the Judiciary to Attorney General Janet Reno (Apr. 5, 2000) available at <http://www.house.gov/judiciary/b5b88a00.pdf>.

tions at Waco, with soldiers, officers, ATF, FBI and Treasury Department officials testifying. The full Committee went on to take testimony from the Attorney General, the Director of the FBI and Davidian victims. Numerous criminal and civil cases relating to the Branch Davidians were pending at the time of the hearing.<sup>36</sup>

- In 1990–92, the Committee investigated whether the Justice Department helped run INSLAW, a small computer company into insolvency. The Committee subpoenaed documents, heard testimony from government officials and Federal judges while an independent counsel investigated criminal allegations.<sup>37</sup>

In fact, congressional committees have long been investigating matters that are under criminal review by the executive branch. For example:

- In 1997–99, the Senate Governmental Affairs Committee investigated campaign financing while the FBI and the DOJ's Campaign Finance Task Force was conducting a criminal investigation. The Committee subpoenaed FBI agents, Task Force attorneys, and obtained a number of documents including the notes of special agents, draft affidavits, notes of the Task Force supervisor and internal memos.<sup>38</sup>
- In 1997–2000, the House Government Reform Committee conducted its own investigation into possible campaign improprieties by the Clinton Administration and the Democratic party. The Committee had Attorney General Janet Reno testify during hearings and subpoenaed deliberative memos from FBI Director Louis Freeh and Campaign Task Force Leader Charles LaBella. When Reno refused to comply, the Committee held her in contempt. Eventually the Committee received all the documentation it requested.<sup>39</sup>
- In 1999–2000, the House Government Reform Committee investigated Federal law enforcement actions at Waco. The Committee subpoenaed FBI investigative files, interviewed 20 FBI agents and reviewed over a million documents. At the same time, former Senator Danforth was investigating as a Special Counsel.<sup>40</sup>
- In 2000–2001, the House Government Reform Committee investigated President Clinton's use of pardons. The majority issued 153 requests and subpoenas for documents, and ultimately received over 25,000 pages. U.S. Attorney Mary Jo

<sup>36</sup>*Federal Actions at Waco, Texas: Hearing Before the Subcommittee on Crime, House Committee on the Judiciary*, 104th Cong. (1995).

<sup>37</sup>*The INSLAW Affair*, H.R. REP. NO. 102–857 (1992).

<sup>38</sup>*See, e.g., Campaign Finance Investigation: Hearing before the Senate Governmental Affairs Committee*, 105th Cong. (1997).

<sup>39</sup>*See for example, Hearing on John Huang and the Riady Family before the House Government Reform Committee*, 106th Cong. (1999); *see also, Investigation into Allegations of Justice Department Misconduct in New England—Volume 1 Before the Committee on Government Reform, House of Representatives*, 107th Cong., 1st and 2nd Sess.(2001–02) (testimony of Morton Rosenberg, Congressional Research Service, American Law Division) (discussing the history of the House Government Reform Committee's investigation of campaign finance violations).

<sup>40</sup>*Tragedy at Waco: New Evidence Examined*, H.R. REP. NO. 106–1037 (2000).

White was conducting her own criminal investigation at the time.<sup>41</sup>

- In 2000–2001, the House Government Reform Committee investigated the Boston FBI field office’s use of confidential informants. The Committee subpoenaed FBI files, direct evidence, such as wiretap logs, and deliberative memos. At the time of this investigation, an FBI agent, John Connelly, was under indictment.<sup>42</sup>

In fact, in 4 years, the Clinton administration turned over 1.2 million pages of documents—including criminal investigators’ files, evidence, and deliberative memoranda—to the House Government Reform Committee alone despite ongoing criminal investigations.<sup>43</sup> There are scores of examples from other Committees also:

- For example, in 2002 the Senate Governmental Affairs Committee investigated the collapse of Enron Corporation and its outside auditor Arthur Andersen while the SEC investigated possible criminal violations. The Committee took testimony from several executives during hearings. In all, there were 30 hearings within the House and Senate between 2001 and 2003.<sup>44</sup>
- In 2002, the House Energy and Commerce Committee investigated Martha Stewart for insider trading allegations involving ImClone stock while Martha Stewart and ImClone officials were under investigation by the DOJ.<sup>45</sup>
- In 2002, the House Financial Services Committee investigated the WorldCom scandal while criminal and civil cases were pending. During hearings, analysts and the chairman of the board testified, while other executives refused to testify citing the 5th Amendment.<sup>46</sup>

Finally, the General Accounting Office (GAO) has traditionally conducted investigations while parts of the administration were pursuing criminal investigations. For example:

- In 1998–2001, the GAO investigated the actions of FBI investigators in the Wen Ho Lee espionage case. Lee was under investigation by the FBI from 1996 until his indictment in 1999.<sup>47</sup>

<sup>41</sup>*Justice Undone: Clemency Decisions in the Clinton White House*, H.R. REP. NO. 107–454 (2002).

<sup>42</sup>*Everything Secret Degenerates: The FBI’s Use of Murderers as Informants*, H.R. REP. NO. 108–414 (2003).

<sup>43</sup>[http://www.house.gov/reform/min/pdfs/pdf\\_com/pdf\\_clinton\\_doc\\_prodoc\\_rep.pdf](http://www.house.gov/reform/min/pdfs/pdf_com/pdf_clinton_doc_prodoc_rep.pdf)

<sup>44</sup>See e.g., *The Role of the Board of Directors in Enron’s Collapse: Hearing before the Permanent Subcommittee on Investigations, Senate Governmental Affairs Committee*, 107th Cong. (2002).

<sup>45</sup>*An Inquiry into the ImClone Cancer Drug Story: Hearing before the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce*, 107th Cong. (2002).

<sup>46</sup>*Wrong Numbers: The Accounting Problems at Worldcom: Hearing Before the House Committee on Financial Services*, 107th Cong. (2002).

<sup>47</sup>*FBI Official’s Congressional Testimony Was Inaccurate Because He Failed to Present Certain Information That Had Been Made Available to Him About the Wen Ho Lee Investigation*, General Accounting Office, GAO–01–869R, June 28, 2001.

- In 1999–2000, the GAO investigated the Waco incident while DOJ Special Counsel Danforth was still conducting his investigation.<sup>48</sup>
- In 1994–96, the GAO investigated the White House Travel Office under the Clinton administration while criminal investigations were being conducted by the DOJ, the Internal Revenue Service, the Treasury Department Inspector General and the Office of Professional Responsibility.<sup>49</sup>

Because of this long precedent of dual-track investigations, we do not believe the limited congressional oversight of the type envisioned by H. Res. 499 would jeopardize DOJ efforts to investigate this matter. However, in an effort to create a mutually agreeable solution, Ms. Jackson Lee offered an amendment that would limit H. Res. 499's effect to "only those documents that the Federal official appointed to carry out the criminal investigation of the Department of Justice into the disclosure of Ms. Valerie Plame as an employee of the Central Intelligence Agency determines would not interfere with the investigation." In effect, it would have vested Mr. Fitzgerald with the authority and flexibility to determine what would interfere with his own investigation instead of ruling out all Plame-related documents whether intrusive on the criminal investigation or not. The amendment was defeated by the majority.

This sort of delegation is not uncommon. Since the creation of the Resolution of Inquiry, the House has given certain respondents the latitude to screen their response when appropriate, such as when the request implicated military concerns or might be against the public interest.<sup>50</sup> Allowing the special prosecutor in this situation the same flexibility would not have created an unbearable burden any more than in those situations, especially considering in what high regard Mr. Fitzgerald is held in. As Chairman Sensenbrenner stated, "Mr. Fitzgerald is a man of unimpeachable integrity." It is therefore unclear why doesn't trust his judgment in determining what would interfere with his investigation.

*B. This resolution does not violate Federal Rule of Criminal Procedure 6(e)'s requirement of grand jury secrecy.*

The majority also argued that the resolution would violate grand secrecy requirements.

Federal Rule of Criminal Procedure 6(e) prohibits the disclosure of a "matter occurring before a grand jury."<sup>51</sup> However, as the DOJ's own *Federal Grand Jury Practice* manual explains,

Rule 6(e) does not cover all information developed during the course of a grand jury investigation, but only information that would reveal the strategy or direction of the investigation, the nature of the evidence produced before the grand jury, the views expressed by members of the grand

<sup>48</sup> *Department of Defense: Military Assistance During the Branch Davidian Incident*, General Accounting Office, NSIAD-00-240R, Aug. 21, 2000; *Department of Defense: Military Assistance Provided at Branch Davidian Incident*, General Accounting Office, NSIAD/OSI-99-133, Aug. 26, 1999.

<sup>49</sup> *White House Travel Office*, General Accounting Office, AIMD-96-138R, Sept. 18, 1996; *White House Travel Office Review*, General Accounting Office, T-GGD-96-33, Oct. 24, 1995.

<sup>50</sup> Louis Fisher, *House Resolutions of Inquiry*, Congressional Research Service, May 12, 2003 at 7-10.

<sup>51</sup> FED. R. CRIM. P. 6(e)(2).



jury, or anything else that actually occurred before the grand jury . . . *In short, to come within the Rule 6(e) secrecy prohibition, the material in question must “reveal some secret aspect of the inner workings of the grand jury.”*<sup>52</sup>

Material created independently of the grand jury has long been held to be outside of the grand jury secrecy rules.<sup>53</sup> In particular, investigative material gathered by law enforcement agents instead of a grand jury has repeatedly been found to be outside of Rule 6(e).<sup>54</sup> That information is gathered with an “eye toward ultimate use in a grand jury proceeding” does not invoke secrecy protections.<sup>55</sup> As long as the investigative information was not collected at the direction of a grand jury nor is presented in a manner that reveals what took place in front of the grand jury, disclosure is proper.<sup>56</sup> In fact, DOJ disclosure of this material would continue the long history of its routine disclosure of criminal investigative information in response to pressing Congressional inquiries such as this.<sup>57</sup>

The documentation requested by H. Res. 499 would not betray the “inner workings of the grand jury.” The records of communications about Ms. Plame—phone logs, copies of emails, internal White House memoranda—were created completely independently of the grand jury process and are therefore not protected by Rule 6(e). That some of these records may have been presented to the grand jury by Mr. Fitzgerald’s prosecutorial team does not make them inaccessible either. This resolution asked for all documentation relating to the leak; and if all documentation were turned over to the House without any signification of which documents were actually presented to the grand jury, Rule 6(e) protections would remain intact.

In that this resolution incidentally requested any materials that would reveal grand jury information, such as prosecutorial documents discussing grand jury strategy, or compilations of evidence created by the prosecution, we did not expect disclosure. As with any request for information, we expected the Department of Justice to comply with longstanding criminal procedure rules. To clarify this and to cure any potential conflicts with Rule 6(e), Ms. Jackson

<sup>52</sup>“Federal Grand Jury Practice,” Office of Legal Education, Executive Office for United States Attorneys, Department of Justice, August 2000 at 40 (emphasis added) (citing *United States v. Smith*, 123 F.3d 140, 148 (3d Cir. 1997); *Anaya v. United States*, 815 F.2d 1373, 1379 (10th Cir. 1987); *Fund for Constitutional Gov’t v. National Archives & Records Serv.*, 656 F.2d 856, 869 (D.C. Cir. 1981); *In re Grand Jury Investigation*, 630 F.2d 996, 1000 (3d Cir. 1980); *In re Grand Jury Investigation (Lance)*, 610 F.2d 202, 217 (5th Cir. 1980); *United States v. Stanford*, 589 F.2d 285, 291 (7th Cir. 1978); *United States Industries, Inc. v. United States Dist. Court*, 345 F.2d 18, 21–22, (9th Cir. 1965); *United States v. Interstate Dress Carriers, Inc.*, 280 F.2d 52, 54 (2d Cir. 1960)).

<sup>53</sup>*Id.*

<sup>54</sup>*In re Grand Jury Subpoena*, 920 F.2d 235, 242–43 (4th Cir. 1990); *Anaya v. U.S.*, 815 F.2d 1373, 1379–80 (10th Cir. 1987); *In re Grand Jury Matter (Catania)*, 682 F.2d 61, 64 (3rd Cir. 1982); *U.S. v. Interstate Dress Carriers, Inc.*, 280 F.2d 52, 54 (2d Cir. 1960).

<sup>55</sup>Catania, 682 F.2d at 64.

<sup>56</sup>See *supra* note 32.

<sup>57</sup>Morton Rosenberg, *Investigative Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry*, Congressional Research Service, Apr. 7, 1995 at 29–31. See also, *Investigation into Allegations of Justice Department Misconduct in New England—Volume 1 Before the Committee on Government Reform, House of Representatives*, 107th Cong., 1st and 2nd Sess. (2001–02) (testimony of Morton Rosenberg, Congressional Research Service, American Law Division) (listing 18 distinct Congressional investigations that acquired criminal files from the DOJ).

Lee offered an amendment that would exempt “those documents the transmission of which [would] violate Rule 6(e) of Federal Rule of Criminal Procedure as determined by the Federal officer appointed to carry out the criminal investigation . . .” The amendment failed on a party-line vote of 8–17.

#### 4. CONCLUSION

This leak should be troubling to every member of this Committee, Republican and Democrat. It compromises our national security, our intelligence assets and reeks of a Nixon-era “enemies list.” This action flies in the face of the President’s promise to “change the tone” in Washington; it is unethical and most likely criminal.

There is a deafening silence from this Congress despite substantial evidence of stonewalling by the Justice Department. When it came to 30 year old land deals in Arkansas, the suicide of Vince Foster, or a private sexual affair, this Congress had an insatiable appetite for investigation. Now when it comes to the disclosure of national security secrets by high ranking White House officials, there is a sudden lack of appetite for fulfilling our constitutional oversight responsibility. That is a shame.

JOHN CONYERS, JR.  
HOWARD L. BERMAN.  
RICK BOUCHER.  
JERROLD NADLER.  
MELVIN L. WATT.  
ZOE LOFGREN.  
SHEILA JACKSON LEE.  
MAXINE WATERS.  
MARTIN T. MEEHAN.  
WILLIAM D. DELAHUNT.  
ROBERT WEXLER.  
TAMMY BALDWIN.  
ANTHONY D. WEINER.  
ADAM B. SCHIFF.  
LINDA T. SÁNCHEZ.

