

REQUESTING THE PRESIDENT 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 RELATING TO THE DISCLOSURE OF THE IDENTITY AND EMPLOYMENT OF MS. VALERIE PLAME

SEPTEMBER 21, 2005.—Referred to the House Calendar and ordered to be printed

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

ADVERSE REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany H. Res. 418]

The Permanent Select Committee on Intelligence, to whom was referred the resolution (H. Res. 418) requesting the President 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 relating to the disclosure of the identity and employment of Ms. Valerie Plame, having considered the same, report unfavorably thereon without amendment and recommend that the resolution not be agreed to.

COMMITTEE STATEMENT AND VIEWS

A. Purpose and summary

H. Res. 418 is a resolution of inquiry requesting the President to transmit to the House of Representatives not later than 14 days after its enactment all documents in his possession relating to the disclosure of the publicly alleged identity of Ms. Valerie Plame as an employee of the Central Intelligence Agency. The resolution requests documents during the period beginning May 6, 2003 and ending on July 31, 2003.

B. Background

A resolution of inquiry may be adopted by the House as a means of obtaining documents from the Executive Branch for investigative purposes. Clause 7 of rule XIII of the House of Representatives provides for specific procedures regarding resolutions of inquiry in the

House, including that a motion to discharge a committee from its consideration shall be privileged if not reported to the House within 14 legislative days after its introduction. H. Res. 418 was introduced on July 29, 2005. Including recess days, the Committee adversely reports H. Res. 418 to the House within 14 legislative days of its introduction in the House.

The resolution seeks documents that relate to the disclosure of the alleged identity of Ms. Valerie Plame as an employee of the Central Intelligence Agency. On December 30, 2003, then-Attorney General John Ashcroft publicly announced that he had appointed Patrick Fitzgerald, United States Attorney for the Northern District of Illinois, as Special Counsel to investigate this matter. The Special Counsel's investigation remains ongoing. On September 14, 2005, the Department of Justice advised the Committee by letter that "Mr. Fitzgerald has advised that production at this time of the documents responsive to H. Res. 418 * * * and any attendant hearings, would interfere with his investigation."¹ The Department requested that the Committee adversely report H. Res. 418.

Under the precedents of the House, a Committee may choose to adversely report a resolution of inquiry when it concludes that it competes with other investigations that are regarded as more appropriate.² In 1980, the Judiciary Committee adversely reported H. Res. 571,³ noting the opposition of the Department of Justice, which centered on the concerns that disclosure of evidence to the House would jeopardize the Department's ability 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 persons.⁴

More recently and more directly relevant to the immediate resolution, four Committees of the House in 2004 adversely reported a resolution of inquiry requesting documents relating to the same subject matter as H. Res. 418. In the 108th Congress, H. Res. 499 requested the President and directed the Secretary of State, Secretary of Defense, and the Attorney General to provide documents in their possession relating to the disclosure of the identity and employment of Ms. Valerie Plame. The resolution was adversely reported by the Permanent Select Committee on Intelligence,⁵ the Committee on International Relations,⁶ the Committee on the Judiciary,⁷ and the Committee on Armed Services.⁸ Each Committee expressed its view that the pending criminal investigation was the most appropriate avenue for determining the facts of the case and any wrongdoing that may have occurred.⁹

¹Letter from Assistant Attorney General William Moschella to Chairman Peter Hoekstra, September 14, 2005 (included in record of Committee business meeting of September 15, 2005).

²See Fisher, "House Resolutions of Inquiry," Congressional Research Service Report for Congress RL31909, at 14 (May 12, 2003).

³H. Rpt. 96-778, 96th Cong., 2d Sess. (February 20, 1980).

⁴Fisher, *supra* note 2, at 15.

⁵H. Rpt. 108-413, Part 1, 108th Cong., 2d Sess. (February 3, 2004).

⁶H. Rpt. 108-413, Part 2, 108th Cong., 2d Sess. (February 27, 2004).

⁷H. Rpt. 108-413, Part 3, 108th Cong., 2d Sess. (February 27, 2004).

⁸H. Rpt. 108-413, Part 4, 108th Cong., 2d Sess. (February 27, 2004).

⁹The Permanent Select Committee on Intelligence concluded "[b]ecause this resolution of inquiry may impede that investigation, the resolution is reported adversely." *Supra* note 5, at 4. The Committee on International Relations "concluded that it would be unwise to allow H. Res. 499 to jeopardize an ongoing criminal investigation by the Department of Justice." *Supra* note 6, at 3. The Committee on the Judiciary expressed its belief "that the current grand jury investigation is the more appropriate avenue for determining the facts of the case and any criminal wrongdoing." *Supra* note 7, at 6. The Committee on Armed Services "concluded that transmittal

The Committee believes that it is imperative that the Congress and the Executive Branch continue to take aggressive steps to protect classified intelligence and national security information from unauthorized disclosures, whether it is the identity of an individual, details of intelligence sources and methods, or classified documents. Spurred by a number of recent events, it is currently conducting a broad, substantive, and evenhanded review dealing with legislative, policy, and oversight issues arising from the overall problem of unauthorized disclosures of classified information. These events include the determination by the President's Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction that "a persistent inability to protect human and technical collection [from disclosure] has substantially damaged U.S. intelligence capabilities,"¹⁰ recent criminal cases, media reports on sensitive intelligence programs, and the matter that is the subject of H. Res. 418.

To the extent that these events call for review of legislative and policy issues, the House must focus on the problem broadly rather than focusing solely on any specific case. To the extent that any of these incidents implicate potential criminal liability in individual cases, those issues should be properly and more effectively dealt with by the proper investigative authorities without interference from the House. Accordingly, the Committee adversely reports H. Res. 418 to the House.

HEARINGS

The Committee held no hearings on H. Res. 418.

COMMITTEE CONSIDERATION AND VOTE

On September 15, 2005, the Committee met in open session and ordered H. Res. 418 adversely reported, without amendment. The Committee took the following recorded vote:

1. A motion by Mr. Hoekstra to report H. Res. 418 adversely to the House was agreed to by a record vote of 11 ayes to 9 noes:

Voting aye: Mr. Hoekstra (Chairman), Mr. LaHood, Mr. Cunningham, Mr. Everett, Mr. Gallegly, Ms. Wilson, Ms. Davis, Mr. Thornberry, Mr. McHugh, Mr. Tiahrt, Mr. Renzi.

Voting no: Ms. Harman, Mr. Hastings, Mr. Reyes, Mr. Boswell, Mr. Cramer, Ms. Eshoo, Mr. Holt, Mr. Ruppersberger, Mr. Tierney.

SECTION-BY-SECTION ANALYSIS

The resolution requests the President to transmit to the House of Representatives not later than 14 days after its enactment all documents in his possession relating to the disclosure of the publicly alleged identity of Ms. Valerie Plame as an employee of the Central Intelligence Agency. The resolution requests documents during the period beginning May 6, 2003 and ending on July 31, 2003, and would apply to "all documents, including telephone and electronic mail records, logs and calendars, personnel records, and records of internal discussions in the possession of the President."

of the materials identified in H. Res. 499 would undermine the investigation and possible criminal prosecution of any suspects believed to have committed a crime in the Plame matter." *Supra* note 8, at 3.

¹⁰ Report to the President of the United States by the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (March 31, 2005), at 380.

The Committee adopted no amendments.

OVERSIGHT FINDINGS AND RECOMMENDATIONS

In accordance with clause 3(c)(1) of rule XIII 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 House of Representatives is inapplicable because this resolution does not provide new budgetary authority or increased tax expenditures.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with Clause (3)(c)(4) of rule XIII of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

UNFUNDED MANDATE STATEMENT

H. Res. 418 provides no federal mandates.

ADDITIONAL VIEWS

The report notes that the Committee is conducting a broad review of issues arising from the problem of unauthorized disclosures of classified information spurred by a number of events, including recent criminal cases. I provide these additional views simply to clarify a factual matter which arose during the Committee's business meeting relating to the criminal case of former National Security Adviser Samuel R "Sandy" Berger.

Mr. Berger recently pled guilty to a federal misdemeanor charge of unauthorized removal and retention of classified material. At the Committee markup, Ms. Harman noted for the record that the Justice Department had stipulated that no original documents had been removed from the National Archives, but instead copies of draft documents on which he had written notes. I simply wish to clarify that the Factual Basis for Plea in this case indicates that Mr. Berger removed five documents from the National Archives, each different versions of the same document, and only returned two documents to the Archives staff. Mr. Berger has indicated that the other three documents were cut into small pieces and discarded, although it is not clear in the court record how or where this occurred, or whether the materials were ever fully accounted for.

The court record further indicates that the 9/11 Commission received copies of each of the documents that were removed from the Archives in the normal course of production. However, it is not stated whether Mr. Berger created additional handwritten notes on the documents that were destroyed, or whether Mr. Berger was aware that the destroyed materials were duplicates.

JOHN M. McHUGH.

MINORITY VIEWS

Disclosing the identity of our intelligence operatives is a serious breach of national security and dangerous to the men and women who serve the United States. Revealing this information provides our enemies with information about those who risk their lives to work covertly with or for the U.S. Government. It undermines morale among our intelligence professionals at a time when the nation increasingly relies on their dedication and expertise. And it compromises our ability to conduct intelligence operations around the world.

Exploring the issue of leaks is an appropriate oversight issue for this Committee. As Chairman Hoekstra recently stated in a speech to the Heritage Foundation, "We know the enemy pays very close attention to open-source material—such as U.S. newspapers and the Internet—in order to gain a better understanding of our objectives and capabilities."

To that end, the Committee is conducting a series of hearings on leaks of classified information. This week, we held our first hearing on this issue to assess the damage done by leaks of classified information.

H. Res. 418, sponsored by Rep. Holt, would require the Administration to provide documents and other materials to Congress regarding the disclosure of the identity of a CIA employee so that the Committee can exercise its oversight responsibilities regarding the compromise of classified intelligence information.

The Majority articulated two arguments against this resolution, neither of which withstands scrutiny.

First, the Majority claimed that Congressional oversight of this issue would interfere with the pending criminal investigation. As an initial matter, Special Prosecutor Patrick Fitzgerald has stated in court filings that the investigation has been complete since October 2004. As the Resolution only asks for documents from May 6, 2003, to July 31, 2003, it is unclear how producing these documents to Congress would interfere with an investigation that has been complete for nearly a year.

More fundamentally, the existence of a criminal investigation has never barred Congress from investigating important public policy issues. For example, in the 1970s, Congress investigated Watergate as criminal prosecutions were being brought. In 1999, Congress investigated the Wen Ho Lee matter while DOJ was conducting a parallel investigation. In 2002 and 2003, the Oversight and Investigations Subcommittee of the House Energy and Commerce Committee investigated the collapse of Enron, insider trading by Martha Stewart, and accounting irregularities at HealthSouth at the same time as the Justice Department was vigorously prosecuting individuals connected to all three matters. This year, Senator John McCain has led an intense investigation into

the activities of lobbyist Jack Abramoff, even as Mr. Abramoff has been the target of multiple criminal investigations. And throughout the 1990s, Committees in both chambers investigated “Whitewater,” notwithstanding the fact that special prosecutors were simultaneously investigating and prosecuting those same issues.

Second, the Majority claimed that H. Res. 418 is simply a partisan resolution. We do not believe that protecting the identities of intelligence professionals is—or should be—a partisan issue. Indeed, President George H.W. Bush stated in a speech to CIA employees in 1999 that those who leak the identity of intelligence operatives are the “most insidious of traitors.” The Majority’s claim that a leak of a CIA officer’s identity should not be investigated by this Committee because doing so would be “partisan” simply sidesteps the merits of the issue and does a disservice to our intelligence professionals.

The Committee must demonstrate to the public, as well as to the dedicated men and women of the Intelligence Community, that we understand the gravity of this security breach. It is our duty to show our intelligence officers that we value their service and will fight to protect them from reckless disclosures. In adversely reporting out H. Res. 418, the Committee missed a critical opportunity to exercise appropriate and responsible oversight of this serious matter.

JANE HARMAN.
ALCEE L. HASTINGS.
SILVESTRE REYES.
LEONARD L. BOSWELL.
BUD CRAMER.
ANNA ESHOO.
RUSH HOLT.
DUTCH RUPPERSBERGER.
JOHN F. TIERNEY.

