

DIRECTING 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 ATTORNEY GENERAL RELATING TO THE DISCLOSURE OF THE IDENTITY AND EMPLOYMENT OF MS. VALERIE PLAME

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

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

ADVERSE REPORT

together with

DISSENTING VIEWS

[To accompany H. Res. 420]

[Including Committee Cost Estimate]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 420) directing 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 Attorney General relating to the disclosure of the identity and employment of Ms. Valerie Plame, having considered the same, reports unfavorably thereon without amendment and recommends that the resolution not be agreed to.

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PURPOSE AND SUMMARY

House Resolution 420, introduced by Rep. Holt on July 29, 2005, directs the Attorney General to transmit to the House of Representatives not later than 14 days after the date of adoption of the 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 OF INQUIRY

House Resolution 420 is a resolution of inquiry. House of Representatives Rule XIII clause 7 provides that if the Committee to which a resolution of inquiry is referred does not act on the resolution within 14 legislative days, a privileged motion to discharge the Committee is in order on the House floor. In calculating the days available for Committee consideration, the day of introduction and the day of discharge are not counted.¹

Upon introduction, H. Res. 420 was referred to the Committee on the Judiciary. Similar resolutions have been referred to the Committees on Armed Services, International Relations, as well as the Permanent Select Committee on Intelligence.² These resolutions are substantially similar to H.Res. 499, which the Committees on the Judiciary, Armed Services, and International Relations and the Permanent Select Committee on Intelligence reported adversely in the 108th Congress.³

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."⁴

A Committee that receives a referral of a resolution of inquiry may act on the resolution in a number of ways. 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, including that the request would compete with an ongoing investigation, or that it seeks sensitive documents or information.

Under the first scenario, a Committee may decide to report a resolution of inquiry adversely because it may compete with another investigation that is regarded as the more appropriate avenue for inquiry. In addition, a Committee may deny the request because it

¹ WILLIAM HOLMES BROWN, *HOUSE PRACTICE: A GUIDE TO THE RULES, PRECEDENTS AND PROCEDURES OF THE HOUSE* 819 (2003).

² See H.Res. 417, 109th Cong. (2005); H.Res. 418, 109th Cong. (2005); H.Res. 419, 109th Cong. (2005).

³ See H.RPT. No. 108-413, Parts I-IV (2004).

⁴ LEWIS DESCHLER, *PRECEDENTS OF THE HOUSE OF REPRESENTATIVES*, ch. 24, § 8, p. 407 (1976).

seeks sensitive information without any demonstrated need. The Committee on the Judiciary reports H.Res. 420 adversely for both of these reasons.

H. Res. 420 would direct the Attorney General to transmit to the House of Representatives all documents on a matter that is subject to an ongoing criminal investigation by the Department of Justice and United States Attorney Patrick Fitzgerald. There has been no credible allegation that Mr. Fitzgerald has in any way been derelict in his duties. Indeed, the Ranking Member of this Committee has stated that Mr. Fitzgerald “appears to have undertaken a non-partisan, aggressive and leak-free investigation” in this matter, and suggested that the Attorney General appoint him to lead other investigations.⁵ Moreover, the investigation may involve classified information, such as the work Ms. Plame may have done for the Central Intelligence Agency. Additionally, the resolution requests other sensitive information, such as personnel records and records of internal deliberations, for which there has been no demonstrated need.

COMPETING INVESTIGATION

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.⁶ 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. . . .”⁷

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.”⁸ 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.”⁹ 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.”¹⁰

In late September, the Department of Justice opened an investigation as to whether officials who revealed Ms. Plame’s identity

⁵Letter from The Honorable John Conyers, Jr., Ranking Member, Committee on the Judiciary, to Attorney General John Ashcroft (June 2, 2004) (requesting that the Attorney General appoint United States Attorney Patrick Fitzgerald to lead the ongoing investigation of allegations that Pentagon officials have engaged in certain criminal wrongdoing), available at <http://www.house.gov/judiciary—democrats/fitzgeraldpentagonltr9304.pdf>.

⁶Robert Novak, Editorial, *Mission to Niger*, CHI. SUN-TIMES, July 14, 2003, at 31.

⁷*Id.*

⁸Robert Novak, Editorial, *Columnist Wasn’t Pawn for Leak*, CHI. SUN-TIMES, Oct. 1, 2003, at 49.

⁹*Id.*

¹⁰*Id.*

violated Federal law that prohibits identifying covert agents.¹¹ 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.¹² That same day, the media reported that the investigation had moved beyond the White House and CIA to include the State and Defense Departments.¹³

In late October, media accounts stated that “[t]he FBI has interviewed more than three dozen Bush administration officials, including political adviser Karl Rove and press secretary Scott McClellan, in its investigation into the leak of an undercover CIA officer’s identity.”¹⁴ 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.”¹⁵

Attorney General Ashcroft recused himself from the case in December 2003,¹⁶ and Deputy Attorney General James Comey appointed United States Attorney Patrick Fitzgerald to lead the investigation soon thereafter.¹⁷ *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.”¹⁸

In late January, the press reported that a grand jury had convened in Washington, D.C., to hear testimony in this matter.¹⁹ 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.”²⁰ It further states 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,

¹¹*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).

¹²*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).

¹³*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).

¹⁴Curt Anderson, *Rove, McClellan Interviewed in CIA Leak Probe*, A.P. NEWSWIREs, Oct. 23, 2003.

¹⁵*Id.*

¹⁶Toni 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). Attorney General Alberto Gonzales similarly recused himself from this matter shortly after being sworn into office. See Mark Sherman, *Gonzales Recused From Probe*, CHAR. OBS., February 12, 2005, at 12A.

¹⁷*Id.*

¹⁸*Id.*

¹⁹John 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).

²⁰Mike Allen & Susan Schmidt, *Bush Aides Testify in Leak Probe*, W.POST, Feb. 10, 2004, at A01.

a former White House press official, also testified Friday, the sources said.”²¹

Press reports in the spring of 2005 indicated that Mr. Fitzgerald completed the bulk of the preliminary investigation by October 2004, except for testimony from two reporters (Matthew Cooper of *Time* and Judith Miller of the *New York Times*) who had challenged a court order requiring them to provide testimony in the probe.²² The United States Court of Appeals for the District of Columbia Circuit upheld the order in April 2005.²³ The reporters then appealed to the Supreme Court, which declined to hear the case.²⁴ *Time*, Inc. then agreed to comply with the court order to deliver Mr. Cooper’s notes to investigators,²⁵ and Cooper later testified before the grand jury.²⁶ Ms. Miller refused to testify, was held in civil contempt, and has been ordered to be detained in a Federal facility until she agrees to testify or until the expiration of the grand jury.²⁷ The grand jury investigation apparently remains ongoing, and press reports have suggested that Mr. Fitzgerald may be examining whether certain witnesses may have committed perjury or obstructed justice.²⁸

INVESTIGATION CONDUCTED THOROUGHLY AND PROFESSIONALLY

By all public accounts, United States Attorney Fitzgerald has conducted this investigation with complete thoroughness and professionalism. According to one United States Senator, Mr. Fitzgerald is “the straightest shooter I’ve ever known as a prosecutor,” someone who “calls them as he sees them” and who “if he believes the law has been broken, then I’ll stand by him. If he believes it has not, then I’ll stand by him still.”²⁹ Another Senator has noted that Mr. Fitzgerald’s appointment has meant that the investigation would be pursued “without fear or favor,” and that the Senator “has some faith that we would get to the bottom of this.”³⁰ In fact, the Ranking Minority Member of this Committee wrote to the Attorney General last year to request that Mr. Fitzgerald be appointed to lead another investigation involving alleged criminal wrongdoing by Pentagon officials in the handling of classified information.³¹ According to the request, Mr. Fitzgerald had “undertaken a nonpartisan, aggressive and leak-free investigation” in this matter sufficient to justify his appointment in the Pentagon investiga-

²¹ *Id.*

²² Mark Sherman, *CIA Leak Probe Complete Since October, Except for Reporters’ Testimony, Prosecutor Says*, ASSOCIATED PRESS, April 7, 2005.

²³ *In re Grand Jury Subpoena: Judith Miller*, 397 F.3d 964 (D.C. Cir. 2005), *aff’d per curiam*, 405 F.3d 17 (D.C. Cir. 2005), *cert. denied*, 125 S.Ct. 2977 (2005).

²⁴ *Miller v. United States*, 125 S.Ct. 2977 (2005).

²⁵ Pat Milton, *Time Magazine to Hand Over Reporter Notes*, ASSOCIATED PRESS, June 30, 2005.

²⁶ Matthew Cooper, *What I Told the Grand Jury*, +TIME, July 25, 2005, at 38.

²⁷ Richard Schmitt, *Judge Orders Reporter Jailed*, +L.A. TIMES, July 7, 2005 at B01.

²⁸ David Johnston, *et al*, *For Two Aides in Leak Case, Second Issue Rises*, +N.Y. TIMES, July 22, 2005, at A1.

²⁹ United States Senator Richard J. Durbin (D-IL), Press Conference on Karl Rove and Valerie Plame, July 13, 2005.

³⁰ United States Senator Charles E. Schumer (D-NY), Press Conference on Karl Rove and Valerie Plame, July 13, 2005.

³¹ Letter from The Honorable John Conyers, Jr., Ranking Member, Committee on the Judiciary, to Attorney General John Ashcroft (June 2, 2004) (requesting that the Attorney General appoint United States Attorney Patrick Fitzgerald to lead the ongoing investigation of allegations that Pentagon officials have engaged in certain criminal wrongdoing), *available at* <http://www.house.gov/judiciary—democrats/fitzgeraldpentagonltr9304.pdf>.

tion.³² Mr. Fitzgerald has conducted his investigation aggressively and in a nonpartisan manner. The Committee determines that he should continue to do so unimpeded by H.Res. 420.

PRECEDENT FOR DEFERRING TO ONGOING INVESTIGATIONS

“The Federal grand jury enjoys sweeping authority”³³ that allows investigators to subpoena witnesses and request the same documents requested in H. Res. 420, 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.

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 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.*³⁴

As previously noted, this Committee also reported adversely H.Res. 499 in the 108th Congress, which requested substantially the same information from the Attorney General as H.Res. 420, because it would compete with the ongoing grand jury investigation.

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:

³² *Id.*

³³ Charles Doyle, Congressional Research Service Report for Congress: Federal Grand Juries: the Law in a Nutshell 1 (Feb. 5, 2002).

³⁴ Louis Fisher, Congressional Research Service Report for Congress: House Resolutions of Inquiry 14–15 (May 12, 2003).

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.

The Committee believes that an investigation by the Inspector General of the Department of Justice is the more appropriate avenue. . . .³⁵

SENSITIVE DOCUMENTS AND INFORMATION REQUESTED

The second reason the Committee reports this resolution adversely is because it requests sensitive documents and information from the Department of Justice without any demonstrated need. Among other items, H.Res. 420 seeks “personnel records, and records of internal discussions” relating to the disclosure of the identity of Ms. Plame. Such documents could reveal classified information regarding Ms. Plame’s work at the Central Intelligence Agency. The documents also could contain private personnel and employment information about individuals, including Ms. Plame, typically protected from public disclosure. Finally, the resolution specifically requests documents and information reflecting any internal Department of Justice discussions of this matter, which, if such deliberative information exists, may be privileged. Although the Committee reserves the right to request similar information from the Department of Justice or other sources in the future, in the absence of a demonstrated compelling need, it will not do so here.

CONCLUSION

The Committee continues to believe that the current grand jury investigation is the more appropriate avenue for determining the facts of this case and any criminal wrongdoing. Because this resolution of inquiry competes with that investigation, because there have been no allegations that the investigation has been anything other than nonpartisan, aggressive and leak-free, and because the resolution requests sensitive documents and information without a compelling need, the resolution is reported adversely.

³⁵ H.R. Rep. No. 108–215 at 3 (2003).

HEARINGS

No hearings were held in the Committee on the Judiciary on H. Res. 420.

COMMITTEE CONSIDERATION

On September 14, 2005, the Committee met in open session and adversely reported the resolution H. Res. 420 without an amendment by a rollcall vote of 15 yeas to 11 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 vote that occurred during the Committee's consideration of H. Res. 420:

Final Passage. The motion to report the resolution, H. Res. 420, adversely was agreed to by a rollcall vote of 15 yeas to 11 nays.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot			
Mr. Lungren	X		
Mr. Jenkins	X		
Mr. Cannon			
Mr. Bachus			
Mr. Inglis			
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Flake	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Conyers		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler			
Mr. Scott		X	
Mr. Watt			
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt		X	
Mr. Waxler			
Mr. Weiner			
Mr. Schiff		X	
Ms. Sánchez		X	
Mr. Van Hollen		X	
Ms. Wasserman Schultz			
Mr. Sensenbrenner, Chairman	X		

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Total	15	11	

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. 420 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. 420 is not a bill or joint resolution that may be enacted into law.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

H. Res. 420 directs the Attorney General to transmit to the House of Representatives not later than the date that is 14 days after the date of the adoption of the resolution, all documents, including telephone and electronic mail records, logs and calendars, personnel records, and records of internal discussions in the possession of the Attorney General 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.

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. 420 makes no changes to existing law.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, SEPTEMBER 14, 2005

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

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

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

Pursuant to the order, we will now call up House Resolution 420, directing the Attorney General to transmit to the House of Representatives no later than 14 days after the date of adoption of this resolution documents in the possession of the Attorney General relating to the disclosure of the identity and employment of Ms. Valerie Plame for purposes of markup and move that it be reported adversely to the House of Representatives.

Without objection, the resolution will be considered as read and open for amendment at any point, and the Chair recognizes himself for 5 minutes to explain the resolution.

[The resolution, H. Res. 420, follows:]

109TH CONGRESS
1ST SESSION

H. RES. 420

Directing 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 Attorney General relating to the disclosure of the identity and employment of Ms. Valerie Plame.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2005

Mr. HOLT (for himself, Mr. INSLEE, and Mr. GRUJALVA) submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Directing 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 Attorney General relating to the disclosure of the identity and employment of Ms. Valerie Plame.

1 *Resolved*, That the Attorney General is directed to
2 transmit to the House of Representatives not later than
3 the date that is 14 days after the date of the adoption
4 of this resolution, all documents, including telephone and
5 electronic mail records, logs and calendars, personnel
6 records, and records of internal discussions in the posses-
7 sion of the Attorney General relating to the disclosure of

1 the identity of Ms. Valerie Plame as an employee of the
2 Central Intelligence Agency during the period beginning
3 on May 6, 2003, and ending on July 31, 2003.

○

Chairman SENSENBRENNER. This morning the Committee considers House Resolution 420, a resolution of inquiry relating to Ms. Valerie Plame.

Under clause 7 of rule 13 of the House rules, we are required to report this resolution within 14 legislative days after its introduction or a privileged motion to discharge the Committee from consideration would be in order on the House floor.

This resolution is substantially similar to House Resolution 499 from the previous Congress, which the Committee considered and reported adversely on February 27, 2004.

Like its predecessor H.Res. 420 again requests that the Attorney General transmit to the House all documents in his possession, including personnel records and records of internal deliberations relating to the disclosure of the identity of Ms. Plame as an employee of the Central Intelligence Agency during the period May 6 through July 31st 2003.

Again, today, I have moved that the Committee report the resolution adversely for the same reason I did the last time the Committee took up this issue. The investigation is still ongoing and the transmittal of evidence to the House would likely jeopardize the ability of the Justice Department to conduct and complete its investigation.

As has been made abundantly clear in published reports and statements of the Department of Justice, there is and has been for many months an ongoing active grand jury investigation in this matter.

According to recent press accounts, the investigation is moving toward completion and the Committee has not received credible allegations that the special counsel, or the grand jury have in any way been derelict in their duties. We should let the special counsel and the grand jury complete their work without interference, just as we have done since last year.

Four Committees, including Judiciary, Armed Services, International Relations, and the Permanent Select Committee on Intelligence, have reviewed a similar resolution during the previous Congress and rejected it for substantially the same reason. Nothing has occurred in the last year which supports changing that conclusion.

I urge the Members once again to support the motion to report adversely. I yield back the balance of my time, and recognize the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman, Members of the Committee.

We are gathered here today because this present administration refuses to police itself in the midst of ethical and criminal misconduct.

We are here because this Congress continues to turn a blind eye to the wrongful and wrongdoing of this Administration.

Now, over 2 years ago, we've been investigating. In July 2003, a Bush administration official committed one of the most serious and treacherous breaches of national security in recent American history by disclosing to the press the identity of an undercover Central Intelligence Agency operative.

And even worse, it likely was done for political reasons to retaliate against the operative's husband for successfully challenging the President's claim that Iraq had sought nuclear material in Africa.

And so we are confronted with this resolution of inquiry filed by the gentleman from New Jersey, Mr. Holt, in which we examine it and it is very simple. The purpose of the resolution is to get to the bottom of what happened and why the Justice Department is still slow walking this investigation.

We know that, despite urgent pleas from the Central Intelligence Agency for a criminal investigation into the leaker, the Department of Justice and the White House dragged their feet. The Department waited 3 days before notifying the White House of the breach and subsequent investigation.

The White House then waited 11 hours more before telling the staff to preserve evidence. Despite these serious irregularities early last year, my colleagues on the other side of the aisle rejected a similar measure. They apparently did not believe that the Judiciary Committee, whose job is to police the Justice Department, should look into a national security breach, and they delayed the investigation.

There have been significant developments in this case, though, since the last time that I believe should lead them to support it this time.

Things have changed. More evidence has come to light. First, for the past 2 years, the White House has denied that any of its top officials, specifically Deputy White House Chief of Staff, Karl Rove; Vice Presidential Chief of Staff, Lewis Libby; or National Security Council official, Elliot Abrams, were involved in any way in the leak of Mrs. Wilson's covert identity. We now know that both Rove and Libby spoke to reporters about Mrs. Wilson's identity. Public information.

Second, when the Justice Department first started investigating, the President made it clear that he'd fire anyone involved in the leak. But when it became obvious that his top political advisor, Mr. Rove, was implicated, he changed his ethical standards. This past July the President said he would fire someone only if that person committed a crime, raising the bar for firing someone like Mr. Rove.

Further, we now know that Attorney General Ashcroft insisted on being briefed on Department reviews of Mr. Rove that were conducted in connection with the leak, despite his longstanding ties to Mr. Rove.

What were they? Well, Mr. Rove had paid—Mr. Ashcroft had paid Mr. Rove nearly \$750,000 for work on several campaigns. And Mr. Ashcroft eventually recused himself, demonstrating that there were conflicts—

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. CONYERS. I ask for one additional minute, Mr. Chairman.

Chairman SENSENBRENNER. Without objection. The gentleman is recognized.

Mr. CONYERS. Mr. Chairman, I'll be brief. It's time for Congress to exercise its duty to oversee the Executive Branch. I plead with my colleagues this morning. Although some will claim that we shouldn't look into a matter that's being investigated by the Justice Department, but that has never been our standard. This year alone

we've held hearings on allegations of numerous claims of criminal misconduct. For example, in the United Nations Oil-for-Food Program, the same misconduct was being reviewed by the U.S. Attorney for the Southern District of New York. Congress has been looking into the Jack Abramoff scandal at the same time as the Justice Department.

So let's not forget the endless hearings in this Committee.

Chairman SENSENBRENNER. The time of the gentleman has once again expired.

Mr. CONYERS. I ask unanimous consent to put my statement in the record.

Chairman SENSENBRENNER. Without objection. So ordered.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MICHIGAN, AND RANKING MEMBER, COMMITTEE
ON THE JUDICIARY

We are here because the Bush administration refuses to police itself in the midst of criminal and ethical misconduct. We are here because this Congress continues to turn a blind eye to the wrongdoing of this administration. In July 2003, over two years ago, a Bush administration official committed one of the most serious breaches of national security in recent history by disclosing to the press the identity of an undercover Central Intelligence Agency operative. Even worse, it likely was done for political reasons, to retaliate against the operative's husband for successfully challenging the President's claim that Iraq had sought nuclear material in Africa.

The purpose of this resolution is to get to the bottom of what happened and why the Justice Department slow-walked the investigation at the beginning. We know that, despite urgent pleas from the CIA for a criminal investigation into the leaker, the Justice Department and White House dragged their feet. The Department waited three days before notifying the White House of the breach and subsequent investigation. The White House, then waited eleven hours before telling staff to preserve evidence.

Despite these serious irregularities, early last year, my colleagues on the other side of the aisle rejected this same measure. They apparently did not believe that the Judiciary Committee, whose job it is to police the Justice Department, should look into a national security breach and delayed investigation.

There have been significant developments in the case since that time that I believe should lead them to support it this time. First, for the past two years, the White House has denied that any of its top officials, namely Deputy White House Chief of Staff Karl Rove, vice presidential Chief of Staff I. Lewis Libby, or National Security Council official Elliot Abrams, were involved in any way in the leak of Mrs. Wilson's covert identity. We now know that both Karl Rove and Lewis Libby spoke to reporters about Mrs. Wilson's identity.

Second, when the Justice Department first started investigating, the President made it clear that he would fire anyone involved in the leak. But when it became clear that his top political advisor, Mr. Rove, was implicated, he changed his ethical standards. This past July, the President said he would fire someone only if that person "committed a crime," raising the bar for firing someone like Mr. Rove.

Further, we now know that then-Attorney General John Ashcroft insisted on being briefed on Department interviews of Mr. Rove that were conducted in connection with the leak. He did so despite his long-standing ties to Mr. Rove; Mr. Ashcroft had paid Mr. Rove almost \$750,000 for work on several campaigns. That Mr. Ashcroft eventually recused himself demonstrates there were conflicts of interest with his continued involvement.

It is time for Congress to exercise its duty to oversee the Executive Branch. Some will claim that we should not look into a matter that is being investigated by the Justice Department. That is not and has never been our standard. This year alone, Congress has held hearings on allegations of criminal misconduct in the United Nations Oil-for-Food Program; the same misconduct being reviewed by the U.S. Attorney for the Southern District of New York. Congress also has been looking into the Jack Abramoff scandal at the same time as the Justice Department.

Let us not forget the endless hearings in this Committee and others on alleged Clinton-Gore campaign finance violations, the Whitewater claims, and Clinton

White House Travel Office firings. These were matters all under Justice Department review at the time of our hearings.

Finally, I must remind my colleagues of the numerous House and Senate hearings on Watergate that were simultaneous with the Justice Department's own investigation.

I urge my colleagues vote "Yes" on this resolution.

Mr. CONYERS. And I thank the Chairman.

Chairman SENSENBRENNER. Are there amendments? Are there amendments?

If there are no amendments, the question occurs——

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts.

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

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. Mr. Chairman, I can tell by the numbers here that this—that the proponent of the measure before us will not prevail.

But I genuinely believe that we're making a mistake. I think we're making an error, and I say that not just as a Committee, but as an institution and by the institution I mean the institution that was created by article I of the Constitution.

Again and again and again, there are examples of Congress either refusing or hesitating to exercise its oversight responsibilities. The suggestion has been made that somehow if we should secure these documents that we would be interfering with a criminal investigation. That's far from the truth. It just is simply inaccurate. Can problems emerge when there are simultaneous investigations? Yes, they can. The best evidence of that, of course, was the investigation conducted by Congress better than a decade ago involving Colonel Oliver North. But that's when the use of immunity was implicated. That's not the case here. We know that this is a political decision, because there is potential embarrassment to the Administration.

That will always be the case, however, when a Committee of Congress exercises oversight. That's just the way our system works, and it's not working now. It just isn't.

Mr. Conyers alluded to two instances where there have been investigations by congressional Committees and by Department of Justice, whether independent prosecutors or Department of Justice attorneys.

In 2005, the Government Reform Subcommittee on the Federal Workforce investigated allegations that scientists falsified information regarding the Yucca Mountain nuclear repository. The Justice Department is and was investigating the same matter simultaneously.

In 2000, 2001, the House Government Reform Committee investigated the Boston FBI field office use of confidential informants.

There was a Department of Justice Task Force investigating that situation simultaneously. In fact, a former—an FBI agent—or a former FBI agent was indicted, prosecuted, and convicted.

The record is replete, replete, with simultaneous investigations. I'm concerned about the perception of the American people that Congress is abrogating its oversight responsibilities. And I say this to my friends and colleagues on the other side of the aisle.

If we continue in this direction, the American people I dare say will reach a conclusion that these—that this reality is a result of a single-party state, where there are no checks and balances. Here you have a situation where the House majority is Republican. The Senate majority is Republican. And Republicans control the White House. And we are failing in our obligation as an independent branch of Government by not pursuing these matters.

And we will be held accountable sooner or later by the American people as an institution. This is about the role of Congress. Let's put aside the political consequences here, and have the courage to support the resolution.

Chairman SENSENBRENNER. The gentleman's time has expired. Without objection, all Members may place opening statements in the record. Are there amendments?

There are no amendments. A reporting quorum is present. The question occurs on the motion to report House Resolution 420 adversely. All those in favor will say aye.

Opposed, no?

The ayes appear to have——

Mr. CONYERS. Mr. Chairman, I'd like a record vote, please.

Chairman SENSENBRENNER. A record vote will be ordered. Those in favor of reporting the resolution 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?

[No response.]

The CLERK. Mr. Lungren?

Mr. LUNGREN. Aye.

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

Mr. JENKINS. Aye.

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

[No response.]

The CLERK. Mr. Bachus?

[No response.]

The CLERK. Mr. Inglis?

[No response.]

The CLERK. Mr. Hostettler?

[No response.]

The CLERK. Mr. Green?

Mr. GREEN. Aye.

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

Mr. KELLER. Aye.

The CLERK. Mr. Keller, aye. Mr. Issa?

Mr. ISSA. Aye.

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

Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes.
Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye. Mr. King?
Mr. KING. Aye.
The CLERK. Mr. King, aye. Mr. Feeney?
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye. Mr. Franks?
Mr. FRANKS. Aye.
The CLERK. Mr. Franks, aye. Mr. Gohmert?
Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye. Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no. Mr. Berman?
Mr. BERMAN. No.
The CLERK. Mr. Berman, no. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. No.
The CLERK. Ms. Waters, no. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt.
Mr. DELAHUNT. No.
The CLERK. Mr. Delahunt, no. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no. Ms. Sánchez?
[No response.]
The CLERK. Mr. Van Hollen?
Mr. VAN HOLLEN. No.
The CLERK. Mr. Van Hollen, no. Ms. Wasserman Schultz?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Members who wish to cast or change
their votes. The gentleman from Indiana, Mr. Hostettler.
Mr. HOSTETTLER. Yes.
The CLERK. Mr. Hostettler, aye.

Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. No.

The CLERK. Ms. Jackson Lee, no.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Ms. Lofgren, no.

Chairman SENSENBRENNER. The other gentlewoman from California, Ms. Sánchez?

Ms. SÁNCHEZ. No.

The CLERK. Ms. Sánchez, no.

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

Mr. MEEHAN. No.

The CLERK. Mr. Meehan, no.

Chairman SENSENBRENNER. Further Members in the chamber who wish to cast of change their votes?

If not, the Clerk will report.

The CLERK. Mr. Chairman, there are 15 ayes and 11 noes.

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

Relative to the remainder of today's schedule, Ranking Member Conyers has expressed his opposition toward bringing up for consideration the three Katrina-related measures that were scheduled for today's markup.

Judiciary Committee rule 2(d) provides that the Chairman, with such notice as is practicable, the authority to call and convene as he considers necessary additional meetings of the Committee for the consideration of any bill or resolution pending before the Committee or for the conduct of other Committee business.

While this Committee rule permits us to consider the three Katrina-related bills before the Committee this morning, we will not be taking up these three Katrina-related measures at today's markup in response to Mr. Conyers' objection.

The business before the Committee having been concluded. Without objection, the Committee stands adjourned.

[Whereupon, at 10:20 a.m., the Committee was adjourned.]

DISSENTING VIEWS

We strongly dissent from the Majority's decision to report unfavorably H. Res. 420, a resolution of inquiry directed to the Attorney General regarding the leak of the identity of a covert operative. By doing so, the Majority has abdicated the Committee's responsibility to oversee the Justice Department and to ensure the faithful execution of the laws.

Over 2 years ago, in July 2003, a Bush administration official committed one of the most serious breaches of national security in recent history by disclosing to the press the identity of an undercover Central Intelligence Agency operative. Even worse, it likely was done for political reasons, to retaliate against the operative's husband for successfully challenging the President's claim that Iraq had sought nuclear material in Africa.

The purpose of this resolution was getting to the bottom of what happened due to the total absence of a good faith effort at an investigation by the administration. We believe that the Justice Department and White House slow-walked the investigation in its beginning stages. We also believe that, despite numerous White House denials early on, senior White House officials were involved in the leak. Furthermore, the President first promised that he would fire anyone involved in the leak but then changed the standard when his top political advisor was implicated. Finally, then-Attorney General John Ashcroft insisted on being briefed on Department interviews conducted in connection with the leak, notwithstanding his ties to individuals who were questioned.

This resolution of inquiry was a necessary step for getting to the truth. From Watergate to Whitewater, Congress has exercised its constitutional authority to hold the Executive accountable for its actions. A breach of national security by a Republican White House demands no less and, in fact, demands even more.

I. BACKGROUND

A. *The Leak*

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

Nearly a year later, during his 2003 State of the Union address, the President stated that Iraq tried to purchase uranium in Africa:

¹Mike Allen & Dana Priest, *Bush Administration is Focus of Inquiry*, WASH. POST, Sept. 28, 2003, at A1. Ambassador Wilson was a diplomat for twenty-two years and served as President Clinton's Director of African affairs on the National Security Council.

²*Id.*

“The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa.”³ In response, Ambassador Wilson published an op-ed in July 2003 publicizing his findings, or lack thereof.⁴ Approximately 2 weeks later, Robert Novak used his syndicated column to defend the administration’s invasion of Iraq and to call the Ambassador’s credibility into question.⁵ Painting the Ambassador’s assignment to Niger as a favor to his wife, Mr. Novak stated, “Wilson never worked for the CIA, but his wife, Valerie Plame, is an Agency operative on weapons of mass destruction. Two senior administration officials told me Wilson’s wife suggested sending him to Niger to investigate.”⁶ It soon was revealed that those administration officials called at least six members of the press to disseminate Mrs. Wilson’s undercover identity. It is widely suspected that the motivation was revenge for publicly discrediting the President’s primary justification for invading Iraq.

B. Potential Violations of Federal Statutes and Regulations

Disclosing the identity of a covert U.S. agent can be a violation of numerous Federal criminal statutes and administrative regulations. Such violations carry with them penalties including imprisonment, fines, termination of employment, and revocation of security clearance. The following is a list and description of such statutes and regulations.

1. Revealing the identity of certain undercover intelligence officers, agents, informants, and sources

Subsection 421(a) of title 50, United States Code, makes it unlawful for someone, having or having had access to classified information that identifies a covert agent, to intentionally disclose such information to an unauthorized recipient knowing the disclosure identifies the agent and knowing that the government is taking affirmative measures to conceal the agent’s relationship to the United States. The penalty includes a fine, imprisonment for not more than 10 years, or both.

Subsection 421(b) makes it unlawful for someone who, as a result of having access to classified information, learns the identity of a covert agent and intentionally discloses any information disclosing that identity to any person not authorized to receive it. The defendant must know that the information disclosed identifies the agent and that the government is taking steps to conceal the identity. The penalty includes a fine, imprisonment for not more than 5 years, or both.

Subsection 421(c) criminalizes the disclosure of any information that identifies a person as a covert agent as part of a pattern intended to identify and expose such agents and with reason to believe such activities would impair the nation’s foreign intelligence activities. Such disclosure must be to a person not authorized to receive it and be done knowing that the disclosure identifies an agent

³The President, State of the Union (Jan. 28, 2003).

⁴Joseph C. Wilson, IV, *What I didn’t Find in Africa*, N.Y. TIMES, July 6, 2003.

⁵Robert Novak, *The Mission to Niger*, CHICAGO SUN-TIMES, July 14, 2003, at 31.

⁶*Id.*

and the United States is taking steps to conceal it. The penalty includes a fine, imprisonment for not more than 3 years, or both.

2. Conveying public money, property or records

Section 641 of title 18, United States Code, makes it a criminal offense to convey anything of value that belongs to the United States. More specifically, it imposes criminal penalties on anyone who “embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys, or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof.” The penalty for a violation of this statute is a fine, imprisonment for not more than years, or both. The Bush administration already has used this statute to successfully prosecute a government official who leaked government information.⁷

3. Gathering, transmitting, or losing defense information

Section 793(d) of title 18, United States Code, prohibits the unauthorized transmission of any information vital to national defense. It makes it a crime for anyone who has lawful 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, [to] willfully communicate, deliver, transmit . . . to any person not entitled to receive it.” The penalty for a violation of this law includes a fine, imprisonment for not more than 10 years, or both.

4. Gathering or delivering defense information to aid a foreign government

Subsection 794(a) of title 18, United States Code, prohibits the transmission or delivery of any document or information related to national defense to any foreign government or foreign agent. Such conduct is illegal if even the transmission is direct or indirect. The penalty includes death or imprisonment for any term of years.

5. Leaking diplomatic codes and correspondence

Section 952 of title 18, United States Code, imposes criminal penalties on “whoever, by virtue of his employment by the United States, obtains from another or has or has had custody of or access to, any official diplomatic code or any matter prepared in any such code . . . and without authorization or competent authority, willfully publishes or furnishes to another any such code or matter.” The penalty includes a fine, imprisonment for not more than 10 years, or both.

⁷See John Dean, *It Doesn't Look Good for Karl Rove*, CNN.COM, July 15, 2005. Jonathan Randel, a former Drug Enforcement Administration employee, leaked to the media the fact that the name Lord Michael Ashcroft of Great Britain appeared in the DEA's money laundering files. In 2002, the Justice Department obtained an indictment against Mr. Randel for violating section 641. Mr. Randel ultimately pled guilty and was sentenced to 1 year in prison and 3 years of probation. While he was sentencing Mr. Randel, U.S. District Judge Richard Story stated, “Anything that would affect the security of officers and of the operations of the agency would be of tremendous concern, I think, to any law-abiding citizen in this country.”

6. Communication of classified information by government officer or employee

Subsection 783(a) of title 50, United States Code, prohibits any government officer or employee, without authorization of the President or head of the employing department, from communicating in any manner to any other person whom the officer or employee knows or has reason to believe is an agent or representative of a foreign government any information classified by the President or head of an agency that affects national security. The officer or employee must know or have reason to know that the information was classified. The penalty includes a fine of not more than \$10,000, imprisonment for not more than 10 years, or both. In addition, the person would be ineligible to hold any office created by the Constitution or laws of the United States.

7. Executive Order 12958

Presidential Executive Order 12958 prescribes a uniform system for classifying, declassifying, and protecting information related to the national defense. It requires each agency head to implement controls over the distribution of classified information. Section 5.5 provides that, if the Director of the Information Security Oversight Office finds that a violation of the Order has taken place, the Director must report to the appropriate agency head so corrective action may occur. Further, sanctions for such violations include: "reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation."

Finally, section 5.5 of the Order provides that:

(d) The agency head, senior agency official, or other supervisory official shall, at a minimum, promptly remove the classification authority of any individual who demonstrates reckless disregard or a pattern of error in applying the classification standards of this order.

(e) The agency head or senior official shall: (1) take appropriate and prompt corrective action when a violation or infraction . . . occurs; and (2) notify the Director of the Information Security Oversight Office when a violation . . . occurs.

In effect, any supervisor of an individual with access to classified information must sanction such individual if he illegally discloses the information.

8. Classified Information Nondisclosure Agreement (SF-312)

Prior to gaining access to classified information, a government official or employee must sign a Classified Information Nondisclosure Agreement (SF-312). The Agreement states that breaches (i.e., disclosure of classified information) could result in termination of security clearances and removal from employment.

II. THE ADMINISTRATION HAS FAILED TO COOPERATE WITH THE INVESTIGATION

The Executive Branch's handling of the leak has been rife with political and procedural irregularities. Initially, the Justice Department failed to open an investigation into the leak. Immediately after Mr. Novak's piece was published, the CIA contacted the Justice Department four times in the span of 3 weeks to (1) notify it that the disclosure of Wilson's name and covert status probably violated the law and (2) to request a criminal investigation.⁸ On September 29, 2003, over a month after the first CIA notification, the Department finally confirmed that the FBI would investigate the leak.

Unfortunately, the Department's handling of the case still was subject to delays and conflicts of interest. For example, the Department waited 3 days before notifying the White House of the investigation, and the White House in turn waited eleven hours before asking all White House staff to preserve any evidence.⁹ What evidence that employees have turned over has been screened for "relevance" by White House counsel, perhaps filtering out critical information.¹⁰ With respect 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-profile."¹¹ 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.

Also, law enforcement officials close to the investigation have indicated that then-Attorney General Ashcroft was personally and privately briefed on FBI interviews of Karl Rove, then a senior advisor to the President and now the Deputy White House Chief of Staff.¹² This disclosure is troubling because, at the time of these events, Mr. Ashcroft had personal and political connections to Mr. Rove. Mr. Rove was an adviser to Mr. Ashcroft during the latter's political campaigns, earning almost \$750,000 for his services. Mr. Rove also had urged the President to nominate Mr. Ashcroft to be Attorney General after Mr. Ashcroft lost his Senate re-election campaign. The fact that Mr. Ashcroft eventually recused himself demonstrates that there in fact were conflicts of interest with his continued involvement in the investigation. The fact that he did not recuse himself early on and was briefed on the matter may well have violated ethical rules and guidelines.¹³

⁸ Letter from Stanley M. Moskowitz, Director of Congressional Affairs, CIA, to the Honorable John Conyers, Jr., Ranking Member, U.S. House Comm. on the Judiciary (Jan. 30, 2004).

⁹ *Investigating Leaks*, N.Y. TIMES, Oct. 2, 2003, at A30 (editorial).

¹⁰ Richard Stevenson & Eric Lichtblau, *Leaker May Remain Elusive, Bush Suggests*, N.Y. TIMES, Oct. 8, 2003, at A28.

¹¹ Richard Stevenson & Eric Lichtblau, *Attorney General is Closely Linked to Inquiry Figures*, N.Y. TIMES, Oct. 2, 2003, at A1.

¹² Murray Waas, *What Now, Karl? Rove and Ashcroft Face new Allegations in the Valerie Plame Affair*, VILLAGE VOICE, Aug. 13, 2005.

¹³ Federal law requires the Attorney General to promulgate rules mandating the disqualification of any officer or employee of the Justice Department "from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof." 28 U.S.C. § 528 (emphasis added). Pursuant to this requirement, the Department has promulgated regulations stating that:

no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with: (1) any person . . . substantially involved in the

Continued

On December 30, 2003, the Attorney General finally recused himself from the investigation.¹⁴ Then-Deputy Attorney General James Comey became the acting Attorney General for the matter and simultaneously appointed Patrick Fitzgerald, the U.S. Attorney for the Northern District of Illinois, as a special counsel to lead the investigation.¹⁵ Despite the appointment of a special counsel and the empaneling of a grand jury, the investigation has been thwarted and obstructed in numerous ways despite administration promises of full cooperation.¹⁶

For instance, in order for a journalist to reveal his or her source before a grand jury, he or she must receive a waiver from the source authorizing such disclosure. Absent such a waiver, the journalist would protect the First Amendment right of the press and the confidentiality agreement with the source by refusing to testify. In an attempt to get around these obstacles, prosecutors often force potential sources to sign general waivers, waivers that permit any journalist with whom they spoke to testify.¹⁷ To ensure the voluntariness of the waiver, however, journalists recognize only personal waivers that are directed to specific journalists.¹⁸ While some administration officials have granted personal waivers in the leak investigation, not all have done so, thus impeding the investigation.

It has been reported that I. Lewis “Scooter” Libby, Chief of Staff to the Vice President, met with *New York Times* reporter Judith Miller on July 8, 2003, and discussed Mrs. Wilson.¹⁹ Because this meeting took place 6 days before columnist Robert Novak reported the covert information, Mr. Fitzgerald reportedly determined that

conduct that is the subject of the investigation or prosecution; or (2) any person . . . which he knows or has a specific and substantial interest that would be affected by the outcome of the investigation or prosecution. 28 C.F.R. § 45.2.

To reiterate the importance of preventing conflicts of interest, the Justice Department has further explicated the guidelines in its U.S. Attorneys’ Manual. The Attorneys’ Manual provides that:

When United States Attorneys, or their offices, become aware of an issue that could require a recusal in a criminal or civil matter or case as a result of a personal interest or professional relationship with parties involved in the matter, they must contact General Counsel’s Office (GCO), EOUSA. The requirement of recusal does not arise in every instance, but only where a conflict of interest exists or there is an appearance of a conflict of interest or loss of impartiality. U.S. DEPT OF JUSTICE, U.S. ATTORNEYS’ MANUAL § 3-02.170.

Furthermore, rules of professional conduct bar lawyers from matters in which they have conflicts of interest. Because Department attorneys must follow the ethical rules of the bar in which they practice, 28 U.S.C. § 530B, as an official at Main Justice Mr. Ashcroft would have been obligated to comply with the District of Columbia Bar’s Rules of Professional Conduct. These Rules state that, without consent, a lawyer shall not represent a client if “the lawyer’s professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer’s responsibilities to or interests in a third party or the lawyer’s own financial, business, property, or personal interests.” DISTRICT OF COLUMBIA BAR, RULES OF PROFESSIONAL CONDUCT 1.7(b)(4). The American Bar Association mimics this guideline in Rule 1.7 of its own Model Rules of Professional Conduct. See AMERICAN BAR ASSOCIATION, MODEL RULES OF PROFESSIONAL CONDUCT 1.7(a)(2).

¹⁴U.S. Dep’t of Justice, Deputy Attorney General Comey Holds Justice Department News Conference (Dec. 30, 2003) (statement of the Deputy Attorney General).

¹⁵*Id.* The grand jury reportedly expires on October 28, 2005, the same date on which Mr. Fitzgerald’s 4-year appointment as U.S. Attorney expires.

¹⁶President Bush initially promised the full cooperation of the White House: “if there is a leak out of my administration, I want to know who it is. . . . I welcome the investigation.” The President, President Discusses Job Creation with Business Leaders (Sept. 30, 2003) (transcript available at <http://www.whitehouse.gov/news/releases/2003/09/20030930-9.html>).

¹⁷See Howard Kurtz, *Lawyers Secured Rove’s Waiver; Executives Hear Reporters’ Anger*, WASH. POST, July 16, 2005, at A6; Adam Liptak, *Reporter Jailed after Refusing to Name Source*, N.Y. TIMES, July 5, 2005, at A1.

¹⁸See Kurtz, *supra* note 17; Liptak, *supra* note 17.

¹⁹Murray Waas, *The Meeting*, THE AMERICAN PROSPECT ONLINE EDITION (Aug. 6, 2005) (available at <http://www.prospect.org/web/page.ww?section=root&name=ViewWeb&articleId=10077>).

it is relevant to the on-going probe.²⁰ However, according to the same report, his investigation has been impeded by Mr. Libby's failure to produce a personal waiver to Ms. Miller.²¹ Indeed, in a filing with the court overseeing the case, Mr. Fitzgerald stated he could not close the matter because of Ms. Miller's inability to testify about conversations with senior government officials.²² In response to similar concerns expressed by Mr. Fitzgerald about Time reporter Matthew Cooper, Mr. Rove granted a personal waiver to Mr. Cooper.

It should be noted that Mr. Libby's conduct is contrary to the President's guarantees of full cooperation. The President publicly stated that his administration would "fully cooperate" with the investigation.²³ Mr. Libby's failure to comply with this mandate has obstructed the inquiry.

Furthermore, the President has abandoned his duty to discipline his advisors for their roles in the leak and, in fact, has turned away from promises to discipline the leaker. He refused to respond to a request by approximately one-hundred Members of Congress that he ask Karl Rove to either disclose his role in the outing of Mrs. Wilson or resign.²⁴ Second, on July 18, 2005, the President changed the threshold for terminating staff from leaking the identity of Mrs. Wilson²⁵ to the necessity for an actual crime to have been committed.²⁶ On repeated occasions, the President has permitted his staff to mislead and/or lie to the American people in connection with this matter without disciplinary consequences. For instance, White House Press Secretary Scott McClellan assured the American people several times that neither Mr. Rove, Mr. Libby, nor National Security Council official Elliot Abrams were involved in the leak;²⁷ just these past few months, however, we learned that both Mr. Rove and Mr. Libby were sources for Mrs. Wilson's identity.²⁸ Mr. McClellan remains undisciplined for his statements, and Mr. Rove and Mr. Libby apparently still have security clearances.

The administration's failure to punish the leaker is in stark contrast to its past practice, at least with respect to punishment of administration critics. When former Bush Treasury Secretary Paul O'Neill appeared on CBS's 60 Minutes and showed "Secret" documents to support his assertion that the President planned from his first days in office to attack Iraq, the Treasury Department asked its Inspector General to investigate whether O'Neill had improperly

²⁰ *Id.*

²¹ Ms. Miller apparently believes that the general waivers issued by White House officials are "inherently coercive" and inadequate.

²² See *In re: Special Counsel Investigation*, 374 F. Supp.2d 238 (D.D.C. 2005).

²³ The President, Remarks at a Joint Press Availability with Australian Prime Minister John Howard (June 3, 2004) (available at <http://www.whitehouse.gov/news/releases/2004/06/20040603-3.html>).

²⁴ See Letter from the Honorable John Conyers, Jr., Ranking Member, U.S. House Comm. on the Judiciary, *et al.* to the President (July 14, 2005).

²⁵ President George W. Bush, President Bush Holds Press Conference Following the G8 Summit (June 10, 2004) (transcript available at <http://www.whitehouse.gov/news/releases/2004/06/20040610-36.html>).

²⁶ President George W. Bush, President, Prime Minister of India Discuss Freedom and Democracy (July 18, 2005) (transcript available at <http://www.whitehouse.gov/news/releases/2005/07/20050718-1.html>).

²⁷ White House Press Secretary Scott McClellan, Press Briefing (Oct. 10, 2003) (transcript available at <http://www.whitehouse.gov/news/releases/2003/10/20031010-6.html>).

²⁸ See Lorne Manly & David Johnston, *Reporter Says He First Learned of CIA Operative from Rove*, N.Y. TIMES, July 18, 2005, at A1.

released classified documents.²⁹ The Inspector General later found that the Department itself mislabeled the documents and allowed their release.³⁰

III. THE MAJORITY'S OBJECTIONS TO H. RES. 420 ARE UNFOUNDED AND UNPRECEDENTED

The Majority has raised two primary and groundless objections to this resolution. They first contend that Congress should not investigate a matter simultaneously with the Justice Department. They also allege that the Committee is not permitted to obtain secret grand jury material, as they claim this resolution seeks to do. Each of these objections is discussed in turn.

A. *Congress has Investigated Crimes Simultaneous with the Justice Department*

Contrary to the Majority's claims, the Justice Department is not investigating the leak properly and passage of this resolution would not interfere with that inquiry. There are, in fact, numerous precedents for this Committee and others investigating concurrently with the Justice Department:

- In 1997, the Committee held hearings on campaign improprieties in the 1996 presidential election.³¹ 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 Department provided many of these documents to the Committee. The Justice Department was conducting its own investigation and determining whether an independent counsel was warranted.³²
- In 1995, the Subcommittee on Crime heard several days of testimony as part of a congressional investigation into Federal actions at Waco, with soldiers, officers, ATF, FBI and Treasury Department officials testifying.³³ The full Committee took testimony from the Attorney General, the Director of the FBI, and Davidian victims.³⁴ Numerous criminal and civil cases relating to the Branch Davidians were pending at the time of the hearing.
- In 1990–92, the Committee investigated whether the Justice Department helped run INSLAW, a small computer company into insolvency.³⁵ The Committee subpoenaed documents, heard testimony from government officials and Federal

²⁹ Dana Milbank, *White House Fires Back at O'Neill on Iraq*, WASH. POST, Jan. 13, 2004, at A1.

³⁰ Michael Janofsky, *Treasury is Faulted for Papers' Release*, N.Y. TIMES, Mar. 23, 2004, at A18.

³¹ *Oversight of the Department of Justice: Hearing Before the House Comm. on the Judiciary*, 105th Cong., 1st Sess. (1997).

³² Attorney General Janet Reno, Statement of the Attorney General (Dec. 2, 1997).

³³ *Activities of Federal Law Enforcement Agencies toward the Branch Davidians: Hearings Before the Subcomm. on Crime of the U.S. House Comm. on the Judiciary*, 104th Cong., 1st Sess. (July 28, 31 & Aug. 1, 1995).

³⁴ *Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas: Hearing Before the U.S. House Comm. on the Judiciary*, 103rd Cong., 1st Sess. (Apr. 28, 1993).

³⁵ *The INSLAW Affair*, H. Rep. No. 102–857 (1992).

judges while an independent counsel investigated criminal allegations.

- In the 1970's, congressional committees held extensive hearings on Watergate as the Justice Department investigation was on-going.³⁶

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

- From 2004–2005, the House Government Reform Committee,³⁷ the House Energy and Commerce Committee,³⁸ the House Appropriations Committee, and the Senate Homeland Security and Governmental Affairs Committee³⁹ have held hearings on the U.N.'s Oil for Food Program. These hearings have been held simultaneously with an investigation into the same Program by the U.S. Attorney for the Southern District of New York.⁴⁰
- In 2005, the Senate Indian Affairs Committee has investigated the lobbying activities of Jack Abramoff.⁴¹ At the same time, the Justice Department, IRS, and Interior Department have been conducting their own investigations.⁴²
- In 2005, the House Government Reform Subcommittee on the Federal Workforce and Agency Organization has investigated allegations that scientists falsified information regarding the Yucca Mountain nuclear repository.⁴³ The Justice Department is investigating the same matter.⁴⁴

³⁶ *Impeachment of Richard M. Nixon, President of the United States*, H. Rep. No. 93–1305; *Debate on Articles of Impeachment: Hearings Before the U.S. House Comm. on the Judiciary*, 93rd Cong., 2d Sess. (July 24–27, 29–30, 1974); *Impeachment Inquiry: Hearings Before the U.S. House Comm. on the Judiciary*, 93rd Cong., 2d Sess. (Jan. 31–July 23, 1974).

³⁷ *Oil for Food Program: Hearing Before the Subcomm. on National Security, Emerging Threats, and Int'l Relations of the U.S. House Comm. on Gov't Reform*, 109th Cong., 1st Sess. (Apr. 12, 2005); *The U.N. Oil for Food Program, Cash Cow Meets Paper Tiger: Hearing Before the Subcomm. on National Security, Emerging Threats, and Int'l Relations of the U.S. House Comm. on Gov't Reform*, 108th Cong., 2d Sess. (Oct. 5, 2004); *The Iraqi Oil-for-Food Program, Starving for Accountability: Hearing Before the Subcomm. on National Security, Emerging Threats, and Int'l Relations of the U.S. House Comm. on Gov't Reform*, 108th Cong., 2d Sess. (Apr. 21, 2004).

³⁸ *The United Nations Oil-for-Food Program—A Review of the 661 Sanctions Committee: Hearing Before the Subcomm. on Oversight and Investigations of the U.S. House Comm. on Energy and Commerce*, 109th Cong., 1st Sess. (June 21, 2005); *The United Nations Oil-for-Food Program: Saddam Hussein's Use of Oil Allocations to Undermine Sanctions and the United Nations Security Council: Hearing Before the Subcomm. on Oversight and Investigations of the U.S. House Comm. on Energy and Commerce*, 109th Cong., 1st Sess. (May 16, 2005).

³⁹ *Oil For Influence—How Saddam Used Oil to Reward Politicians Under the United Nations Oil-for-Food Program: Hearing Before the Permanent Subcomm. on Investigations of the U.S. Senate Comm. on Homeland Security and Governmental Affairs*, 109th Cong., 1st Sess. (May 17, 2005); *The United Nations' Management and Oversight of the Oil-for-Food Program: Hearing Before the Permanent Subcomm. on Investigations of the U.S. Senate Comm. on Homeland Security and Governmental Affairs*, 109th Cong., 1st Sess. (Feb. 15, 2005); *How Saddam Hussein Abused the United Nations Oil-for-Food Program: Hearing Before the Permanent Subcomm. on Investigations of the U.S. Senate Comm. on Homeland Security and Governmental Affairs*, 108th Cong., 2d Sess. (Nov. 15, 2004).

⁴⁰ See Judith Miller & Julia Preston, *2 Inquiries are at Odds*, N.Y. TIMES, Jan. 31, 2005, at A8.

⁴¹ *In re Tribal Lobbying Matters: Hearing Before the U.S. Senate Select Comm. on Indian Affairs*, 109th Cong., 1st Sess. (June 22, 2005).

⁴² See Susan Schmidt, *Abramoff Cited Aid of Interior Official*, WASH. POST, Aug. 28, 2005, at A1.

⁴³ See Matthew L. Wald, *Disagreement over Data on Waste Site*, N.Y. TIMES, Apr. 6, 2005, at A18.

⁴⁴ *Id.*

- In 2001, the House Government Reform Committee investigated the Boston FBI field office's use of confidential informants.⁴⁵ The Committee subpoenaed FBI files, direct evidence, such as wiretap logs, and deliberative memos. At the time of this investigation, an FBI agent, John Connolly, was under indictment.⁴⁶
- In 2001, the House Government Reform Committee investigated President Clinton's use of his pardon authority.⁴⁷ The Majority issued 153 requests and subpoenas for documents and ultimately received over 25,000 pages. The U.S. Attorney for the Southern District of New York, Mary Jo White, was conducting her own criminal investigation at the time.⁴⁸
- From April 1998 to May 1999, the House International Relations Committee and House Science Committee convened hearings on potentially illegal transfers of technology by Lockheed Martin, Loral, and Hughes to China. The House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China also held hearings and issued a report.⁴⁹ While these hearings were being held, the Justice Department and a grand jury were conducting an investigation that led to penalties against the violators.⁵⁰
- In 1997–2000, the House Government Reform Committee conducted its own investigation into possible campaign improprieties by the Clinton Administration and the Democratic party.⁵¹ 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 the Attorney General refused to comply, the Committee held her in contempt. Eventually the Committee received all the documentation it requested.
- In 1997–99, the Senate Governmental Affairs Committee investigated campaign financing while the FBI and the Department'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.

⁴⁵ *The FBI's Controversial Handling of Organized Crime Investigations in Boston—the Case of Joseph Salvati: Hearing Before the U.S. House Comm. on Gov't Reform*, 107th Cong., 1st Sess. (May 3, 2001).

⁴⁶ See Tom Farmer, *FBI Feels Heat*, BOSTON HERALD, May 14, 2001, at 1.

⁴⁷ *The Controversial Pardon of International Fugitive Marc Rich: Hearings Before the U.S. House Comm. on Gov't Reform*, 107th Cong., 1st Sess. (Feb. 8 & Mar. 1, 2001).

⁴⁸ David Johnston, *U.S. Attorney in New York will Coordinate Inquiry on Pardons*, N.Y. TIMES, Mar. 14, 2001, at A14.

⁴⁹ H. Rep. No. 105–851.

⁵⁰ Jeff Gerth & Raymond Bonner, *Companies are Investigated for Aid to China on Rockets*, N.Y. TIMES, Apr. 4, 1998, at A1.

⁵¹ *The Role of Yah Lin “Charlie” Trie in Illegal Political Fundraising: Hearing Before the U.S. House Comm. on Gov't Reform*, 106th Cong., 2d Sess. (Mar. 1, 2000); *The Role of John Huang and the Riady Family in Political Fundraising: Hearing Before the U.S. House Comm. on Gov't Reform*, 106th Cong., 1st Sess. (Dec. 15–17, 1999); *The Need for an Independent Counsel in the Campaign Finance Investigation: Hearing Before the U.S. House Comm. on Gov't Reform*, 105th Cong., 2d Sess. (Aug. 4, 1998); *Campaign Finance Improprieties and Possible Violations of Law: Hearing Before the U.S. House Comm. on Gov't Reform*, 105th Cong., 1st Sess. (Oct. 8, 1997).

- In 1995, the House Government Reform Committee investigated Federal law enforcement actions at Waco.⁵² The Committee subpoenaed FBI files, interviewed 20 FBI agents and reviewed over a million documents. At the same time, former Senator John Danforth was investigating as a Special Counsel.⁵³

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 on-going criminal investigations.

There are scores of examples from other committees also:

- For example, in 2002 the House Energy and Commerce Committee investigated the collapse of Enron and its outside auditor Arthur Andersen⁵⁴ while the Justice Department and SEC investigated.⁵⁵ The Committee took testimony from several executives during hearings. In all, there were 30 hearings within the House and Senate between 2001 and 2003.
- In 2002, the House Energy and Commerce Committee investigated Martha Stewart for insider trading allegations involving ImClone stock.⁵⁶ Both Ms. Stewart and ImClone officials were under investigation by the Justice Department.⁵⁷
- In 2002, the House Financial Services Committee investigated the WorldCom scandal while criminal and civil cases were pending.⁵⁸ During hearings, analysts and the chairman of the board testified, while other executives refused to testify citing the 5th Amendment.

Finally, the Government Accountability Office ("GAO") has conducted investigations while the administration was pursuing criminal investigations. For example:

⁵² *Activities of Federal Law Enforcement Agencies toward the Branch Davidians: Hearings Before the Subcomm. on National Security, Int'l Affairs, and Criminal Justice of the U.S. House Comm. on Gov't Reform*, 104th Cong., 1st Sess. (July 19–21, 24–28, 31 & Aug. 1, 1995).

⁵³ David Johnston, *Ex-Senator Picked by Reno to Head New Waco Inquiry*, N.Y. TIMES, Sept. 9, 1999, at A1.

⁵⁴ *Financial Collapse of Enron: Hearings Before the Subcomm. on Oversight and Investigations of the U.S. House Comm. on Energy and Commerce*, 107th Cong., 2d Sess. (Feb. 7, 14 & Mar. 14, 2002); *Developments Relating to Enron Corp.: Hearing Before the U.S. House Comm. on Energy and Commerce*, 107th Cong., 2d Sess. (Feb. 6, 2002); *The Findings of Enron's Special Investigative Committee with respect to Certain Transactions between Enron and Certain of its Current and Former Officers and Employees: Hearing Before the Subcomm. on Oversight and Investigations of the U.S. House Comm. on Energy and Commerce*, 107th Cong., 2d Sess. (Feb. 5, 2002); *The Destruction of Enron-Related Documents by Andersen Personnel: Hearing Before the Subcomm. on Oversight and Investigations of the U.S. House Comm. on Energy and Commerce*, 107th Cong., 2d Sess. (Jan. 24, 2002).

⁵⁵ Rebecca Smith, *U.S. Puts Task Force on Criminal Probe of Enron*, WALL ST. J., Jan. 10, 2002, at A3; Alex Berenson, *SEC Opens Investigation into Enron*, N.Y. TIMES, Nov. 1, 2001, at C4.

⁵⁶ *An Inquiry into the ImClone Cancer-Drug Story: Hearing Before the Subcomm. on Oversight and Investigations of the U.S. House Comm. on Energy and Commerce*, 107th Cong., 2d Sess. (June 13 & Oct. 10, 2002).

⁵⁷ Constance L. Hays, *Investigators Said to be Frustrated in Stewart Case*, N.Y. TIMES, Aug. 12, 2002, at C4.

⁵⁸ *Wrong Numbers: The Accounting Problems at WorldCom: Hearing Before the U.S. House Comm. on Financial Servs.*, 107th Cong., 2d Sess. (July 8, 2002).

- In 1998–2001, the GAO investigated the actions of FBI investigators in the Wen Ho Lee espionage case.⁵⁹ Mr. Lee was under investigation by the FBI from 1996 until his indictment in 1999.⁶⁰
- In 1999–2000, the GAO investigated the Waco incident while Special Counsel Danforth was still conducting his investigation.⁶¹
- In 1994–96, the GAO investigated the White House Travel Office under the Clinton administration.⁶² This occurred while criminal investigations were being conducted by the Department, the IRS, the Treasury Department Inspector General and the Office of Professional Responsibility.⁶³

B. This Resolution would not Violate Grand Jury Secrecy Rules

The Majority incorrectly argues that disclosure of the requested information would violate grand jury secrecy rules. Federal Rule of Criminal Procedure 6(e) prohibits the disclosure of a “matter occurring before a grand jury,”⁶⁴ and a grand jury has been convened to investigate the leak. As the Justice Department’s own *Federal Grand Jury Practice* manual explains, however:

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 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.’*⁶⁵

The documentation requested by H. Res. 420 would not betray the “inner workings of the grand jury.” Material created independently of the grand jury has long been held to be outside of the grand jury secrecy rules.⁶⁶ In particular, investigative material gathered by law enforcement agents instead of a grand jury repeatedly has been found to be outside of Rule 6(e).⁶⁷ That information is gathered with an “eye toward ultimate use in a grand jury pro-

⁵⁹ Letter from the General Accounting Office to the Honorable Arlen Specter, U.S. Senate, *et al.* (June 28, 2001).

⁶⁰ Matthew Purdy & James Sterngold, *The Prosecution Unravels—The Case of Wen Ho Lee*, N.Y. TIMES, Feb. 5, 2001, at A1.

⁶¹ U.S. GENERAL ACCOUNTING OFFICE, MILITARY ASSISTANCE PROVIDED AT BRANCH DAVIDIAN INCIDENT (Aug. 1999).

⁶² Letter from the General Accounting Office to the Honorable William F. Clinger, Chairman, U.S. House Comm. on Gov’t Reform and Oversight (Sept. 18, 1996).

⁶³ U.S. GENERAL ACCOUNTING OFFICE, WHITE HOUSE TRAVEL OFFICE Operations (May 1994).

⁶⁴ FED. R. CRIM. P. 6(e)(2).

⁶⁵ EXECUTIVE OFFICE FOR U.S. ATTORNEYS, U.S. DEP’T OF JUSTICE, FEDERAL GRAND JURY PRACTICE 40 (Aug. 2000) (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 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)).

⁶⁶ *Id.*

⁶⁷ *In re Grand Jury Subpoena*, 920 F.2d 235, 242–43 (4th Cir. 1990); *Anaya*, 815 F.2d at 1379–80; *In re Grand Jury Matter (Catania)*, 682 F.2d 61, 64 (3rd Cir. 1982); *United States v. Interstate Dress Carriers*, 280 F.2d 52, 54 (2d Cir. 1960).

ceeding” does not invoke secrecy protections.⁶⁸ 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. In fact, Justice Department disclosure of this material will continue its history of routine disclosure of criminal investigative information in response to pressing congressional inquiries such as this.⁶⁹

CONCLUSION

This resolution of inquiry was necessary because the Bush administration has consistently refused to police itself in the midst of criminal and ethical misconduct. It has permitted a breach of national security to go unchecked and to be subject to political machinations. In such times, it is the duty of Congress to hold the administration accountable; unfortunately, this Congress has turned a blind eye to the wrongdoing of this administration. The Majority’s rejection of this resolution of inquiry represents not only an abdication of Congress’s responsibility but also another example of its predilection for placing partisan interest above national security.

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⁶⁸ *Catania*, 682 F.2d at 64.

⁶⁹ MORTON ROSENBERG, CONGRESSIONAL RESEARCH SERV., INVESTIGATIVE OVERSIGHT: AN INTRODUCTION TO THE LAW, PRACTICE AND PROCEDURE OF CONGRESSIONAL INQUIRY 29–32 (Apr. 7, 1995). See also *Investigation into Allegations of Justice Department Misconduct in New England—Volume 1: Hearings Before the U.S. House Comm. on Gov’t Reform of the U.S. House of Representatives*, 107th Cong., 1st & 2nd Sess. (2001–02) (testimony of Morton Rosenberg, Congressional Research Service, American Law Division) (listing eighteen distinct congressional investigations that acquired criminal files from the Justice Department).