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4 MARKUP OF RESOLUTION, TO CREATE AN OVER-CRIMINALIZATION TASK
5 FORCE;

6 H.R. 180, THE NATIONAL BLUE ALERT ACT OF 2013; AND

7 H.RES. 196, SUPPORTING THE SIXTH AMENDMENT TO THE UNITED
8 STATES CONSTITUTION, THE RIGHT TO COUNSEL

9 Tuesday, May 7, 2013

10 House of Representatives

11 Committee on the Judiciary

12 Washington, D.C.

13 The committee met, pursuant to call, at 10:09 a.m., in
14 Room 2141, Rayburn Office Building, Hon. Bob Goodlatte
15 [chairman of the committee] presiding.

16 Present: Representatives Goodlatte, Sensenbrenner,

17 Coble, Smith, Chabot, Bachus, Forbes, Gohmert, Poe,
18 Chaffetz, Marino, Gowdy, Amodei, Labrador, Farenthold,
19 Holding, Collins, DeSantis, Scott, Watt, Jackson Lee,
20 Johnson, Deutch, DelBene, Garcia, and Jeffries.

21 Staff present: Shelley Husband, Staff Director;
22 Branden Ritchie, Deputy Chief of Staff/Chief Counsel;
23 Allison Halataei, Parliamentarian; Kelsey Deterding, Clerk;
24 Perry Apelbaum, Minority Staff Director; and Danielle Brown,
25 Minority Parliamentarian.

26

27 Chairman Goodlatte. Good morning. The Judiciary
28 Committee will come to order, and without objection the
29 chair is authorized to declare a recess at any time.

30 I would like to begin today by recognizing that this
31 markup is occurring at the same as the joint subcommittee
32 hearing with the Committee on Oversight and Government
33 Reform and our Subcommittee on the Constitution and Civil
34 Justice next door. Obviously this is not an ideal
35 situation, and we generally try to avoid scheduling
36 conflicts.

37 However, this week is a particularly difficult one with
38 the Joint Session of Congress tomorrow and various other
39 competing priorities. I certainly do not intend for this to
40 be a precedent; however, I would like to ask for the
41 cooperation of all members in helping us finish this
42 bipartisan markup quickly so that members who choose to do
43 so may attend the hearing next door.

44 Pursuant to notice, the business before the committee
45 today is a resolution to establish the House Committee on
46 the Judiciary Oversight Criminalization Task Force.

47 And the clerk will report the resolution.

48 Ms. Deterding. Resolution, establishing the House
49 Committee on the Judiciary Over Criminalization Task Force
50 of 2013.

51 Chairman Goodlatte. Without objection, the resolution
52 is considered as read.

53 [The information follows:]

54

55 Chairman Goodlatte. And I will begin by recognizing
56 myself and the ranking member of the Crime Subcommittee for
57 opening statements.

58 At present there are an estimated 4,500 Federal crimes
59 in the United States Code, many of which address conduct
60 also regulated by the States. According to a study by the
61 Federalist Society, the number of Federal criminal offenses
62 increased by 30 percent between 1980 and 2004. There were
63 452 new Federal criminal offenses enacted between 2000 and
64 2007, averaging 56.5 new crimes per year. Over the past 3
65 decades, Congress has been averaging 500 new crimes per
66 decade.

67 The expansion of the Federal Code has brought with it an
68 ever-increasing labyrinth of Federal regulations, often
69 which impose criminal penalties without requiring that
70 criminal intent be shown to establish guilt. One such
71 example includes an 11-year-old girl who saved a baby
72 woodpecker from the family cat and decided to keep her
73 inside a small cage for a couple of days to make sure the
74 bird was not injured. While there was no evidence that this
75 11-year-old girl intended to break the law, she violated a

76 Federal statute against the possession or transport of a
77 migratory bird and received a \$535 fine.

78 Today the committee will adopt a resolution authorizing
79 a task force on over-criminalization to conduct hearings and
80 investigations and issue a report on over-criminalization in
81 the Federal Code, as well as possible solutions. The task
82 force will be authorized for 6 months and will be led by
83 Crime, Terrorism, Homeland Security, and Investigations
84 Subcommittee Chairman Jim Sensenbrenner and Ranking Member
85 Bobby Scott. Members of the task force include Spencer
86 Bachus, Louis Gohmert, Raul Labrador, George Holding, Jerry
87 Nadler, Steve Cohen, Karen Bass, and Hakeem Jeffries.
88 Ranking Member Conyers and I will serve as ex officio
89 members of the task force.

90 As Federal criminal laws and regulations have increased,
91 so has the number of Americans who have found themselves
92 breaking the law with no intention of doing so. Numerous
93 examples, ranging from a man charged with trespassing a
94 federally protected wilderness area while trying to dodge a
95 blizzard on his snowmobile, to a dad and his son collecting
96 arrowheads on Federal land, show we need to take a closer

107 look at the laws on the books to make sure Americans who
108 make innocent mistakes are not charged with criminal
109 offenses.

110 I am hopeful that the bipartisan task force established
111 today will be able to reach consensus and make
112 recommendations to the House Judiciary Committee on how to
113 improve our Federal criminal statutes. I wish to thank
114 Ranking Member Conyers, Crime Subcommittee Chairman
115 Sensenbrenner, and Ranking Member Scott for joining me to
116 create this bipartisan task force. And I urge my colleagues
117 to join us in approving the resolution.

118 It is now my pleasure to recognize the gentleman from
119 Virginia, Mr. Scott, for his opening statement.

120 Mr. Scott. Thank you, Mr. Chairman. First, I would
121 like to ask unanimous consent that a statement from the
122 Ranking Member, Mr. Conyers, be entered into the record.

123 Chairman Goodlatte. Without objection, it will be
124 entered into the record with pleasure.

125 [The information follows:]

126

117 Mr. Scott. Thank you. And I just want to thank you,
118 Ranking Member Conyers, and Crime Subcommittee Chairman, Mr.
119 Sensenbrenner, for bringing forth this resolution for markup
120 today. I am pleased to join you and my colleagues in moving
121 this matter forward and to see the high level of interest
122 that has been expressed in making needed improvements in our
123 Federal criminal justice system. I look forward to all
124 interested parties in bringing about those improvements.

125 The U.S. Criminal Code has dramatically expanded in size
126 and scope since it was last re-codified about 50 years ago.
127 Although crime is primarily a matter of State and local law,
128 over the last 40 years or so, Congress has increasingly
129 sought to address societal problems by adding criminal
130 provisions to the Federal Code. At present, there are
131 approximately 4,500 Federal criminal codes in the U.S. Code,
132 and many are redundant, and many have not been enforced or
133 utilized by prosecutors for many years.

134 It has been estimated there may be as many as 300,000 or
135 more Federal regulations that can be enforced with criminal
136 penalties. And far too many of these criminal offenses and
137 regulations lack adequate criminal intent, or mens rea,

138 requirement to protect the innocent. As a result, we are
139 hearing many complaints of overuse and abusive uses of the
140 Federal Criminal Code from a broad-based coalition of
141 organizations, including the Heritage Foundation, National
142 Association of Criminal Defense Lawyers, the Cato Institute,
143 the ACLU, and the Washington Legal Foundation.

144 Historically, a mens rea requirement, such as specific
145 intent, willful intent, or knowledge of the specific facts
146 constituting an offense was part of almost every common law
147 crime. Increasingly, however, modern criminal law has
148 forsaken the guilty mind requirement. This is an alarming
149 trend because mens rea plays an important role in protecting
150 the innocent and those who do not intend to commit wrongful
151 or criminal acts from conviction and punishment.

152 Yet since 2000, figures show that Congress has created
153 an average of more than 50 new criminal crimes every year.
154 That is about one a week. And as a result of this continued
155 emphasis on criminalizing more and more activities, often
156 with vague, missing, or non-existent criminal intent
157 standards, the number of Federal prisoners has risen from
158 about 25,000 in 1980 to over 200,000 today. It is a big

159 part of making the United States the world's largest
160 incarcerator by far in terms of incarceration rate, about 7
161 times the international average.

162 And the Pew Research Center has calculated that our
163 incarceration rate is so high that it is actually adding to
164 crime, not solving crime. And as a result, today we are
165 establishing the bipartisan over-criminalization task force
166 to assess issues and make recommendations or improvements to
167 these problems. The work of the task force will involve
168 identifying improvements to the Federal criminal law that we
169 can all agree on. For example, I think we all agree upon
170 requiring that every crime have a specific criminal intent,
171 or mens rea, requirement. And I also believe that we can
172 agree on steps in moving all Federal crimes into Title 18 of
173 the U.S. Code.

174 The task presented by this resolution is an important
175 undertaking, and doing it right and effectively will require
176 a major commitment of time and attention, and must involve
177 participation and input not only from the members of both
178 parties of the House and Senate, but also a diverse
179 gathering of other interested parties, including

180 organizations in the over-criminalization working group I
181 mentioned earlier.

182 We will also need the help of criminal law researchers,
183 the Federal law enforcement community, representatives of
184 the judiciary, including the U.S. Sentencing Commission and
185 the administrative offices of the courts, and other
186 interested organizations and professionals.

187 I look forward to working with my colleagues and all
188 interested parties in pursuing this important bipartisan
189 effort.

190 Thank you, Mr. Chairman. I yield back.

191 Chairman Goodlatte. Thank you, Mr. Conyers -- Mr.
192 Scott.

193 And now I would like to recognize the chairman of the
194 Crime, Terrorism, Homeland Security, and Investigations
195 Subcommittee, and the proposed chairman of the over-
196 criminalization task force, the gentleman from Wisconsin,
197 Mr. Sensenbrenner.

198 Mr. Sensenbrenner. I thank the gentleman for
199 recognizing me. And, you know, usually when you are
200 proposed as a chairman, a lot of these chairmanships around

201 here do not entail very much work. This one will entail a
202 lot of work, but I think it is necessary.

203 The task force established by this resolution continues
204 the committee's bipartisan review of over-criminalization
205 and over-federalization begun two Congresses ago. The Crime
206 Subcommittee held hearings in both the 111th and 112th
207 Congress to resurrect important policy discussions that have
208 been dormant for over 2 decades about the breadth and scope
209 of Federal criminal law.

210 Today there are roughly 4,500 Federal crimes on the
211 books, and still more -- many more regulations and rules
212 that if not abided by result in criminal penalties,
213 including incarceration. Many of these laws impose criminal
214 penalties, often felonies, for violation of federal
215 regulations.

216 Americans are expected to know what is -- that it is
217 wrong to commit murder, or burglary, or engage in an act of
218 terrorism, regardless of what the law says. But today
219 Americans must contend with literally thousands of obscure
220 and cumbersome Federal regulations. A simple misreading or
221 ignorance of a regulation can land a person in prison. An

222 even more fundamental issue raised by such regulation is
223 whether the prohibited conduct should be criminalized in the
224 first place.

225 Unfortunately, many regulatory crimes improperly define
226 the elements of criminality, including omitting or
227 improperly defining the appropriate level of criminal
228 intent. The growth in criminal regulations has also caused
229 an expansion of the number of Federal agencies empowered to
230 investigate this "criminal" conduct. We are all familiar
231 with criminal investigation agencies like the FBI, DEA, or
232 ICE. But how about the National Marine Fisheries Service
233 within NOAA, or the Office of Criminal Investigations within
234 the FDA? Along with broad sweeping criminal regulations
235 comes a host of investigative agencies eager to enforce
236 them.

237 The goal of this task force is to conduct a more in
238 depth analysis of these and other over-criminalization and
239 over federalization-issues to identify improvements to
240 Federal law in the House rules, and to make bipartisan and
241 hopefully unanimous recommendations to the committee.

242 It has been over 50 years since the Criminal Code was

243 last revised. The existing Code is riddled with provisions
244 that are either outdated or simply inconsistent with more
245 recent modifications to reflect today's modern approach to
246 criminal law. Through the years, the Code has grown with
247 more and more criminal provisions, some of which are
248 antiquated or redundant, some of which are poorly drafted,
249 and some of which have not been used in the last 30 years,
250 and some of which are unnecessary since the crime is already
251 covered by existing criminal provisions.

252 Today I will reintroduce the Criminal Code Modernization
253 and Simplification Reform and recodify Title 18 of the Code.
254 This effort to reform the Federal Criminal Code has resulted
255 in a bill that exceeds 1,200 pages in length, and this bill
256 only encompasses Part I of Title 18. If nothing else, the
257 sheer volume of this bill brings into specific focus the
258 breadth of the Federal Criminal Code and the need for
259 reform.

260 I look forward to working with Ranking Member Scott and
261 the other members of the task force to identify common sense
262 and bipartisan solutions not only to reform the Criminal
263 Code within Title 18, but also the myriad of criminal laws

264 that are scattered throughout many of the 59 titles of the
265 Code. And I thank the ranking member and chairman for their
266 support in the creation of this bipartisan task force.

267 Yield back the balance of my time.

268 Chairman Goodlatte. I thank the gentleman.

269 Is there further discussion on the resolution?

270 Ms. Jackson Lee. Mr. Chairman?

271 Chairman Goodlatte. The gentlewoman from Texas is
272 recognized for 5 minutes.

273 Ms. Jackson Lee. Mr. Chairman, let me congratulate the
274 proponents of this task force. Having worked on the
275 Subcommittee on Crime, I could list a whole litany of
276 professions where in the work of their office and the
277 paperwork that they have -- physicians come to mind -- that
278 innocent mistakes can wind up in criminalization.

279 Although I know that this particular statute has not
280 been cited, and I do not know how many Americans realize
281 that 18 U.S.C. 1001 provides a vast breadth and depth of
282 filings that may, through inadvertences, wind up as a
283 criminal offense and a felony.

284 So I welcome and congratulate the effort, and hope that

285 there will be an opportunity for members to sit on some of
286 the hearings that will be held. And I think this is a right
287 and forward thinking direction of this particular committee.

288 With that, I yield back.

289 Chairman Goodlatte. I thank the gentlewoman.

290 And the gentleman from Texas, Mr. Gohmert, is recognized
291 for 5 minutes.

292 Mr. Gohmert. Thank you, and I, too, want to thank you,
293 Chairman, and the Ranking Member, and Chairmen
294 Sensenbrenner, and Ranking Member Bobby Scott. This has, as
295 Chairman Sensenbrenner pointed out, been an issue for 4
296 years. And I think former Attorney General Ed Meese is to
297 be commended for his work and the efforts there at the
298 Heritage Foundation, the others working with the former
299 Attorney General.

300 And one of the things he suggested that I am sure will
301 be considered, is in order to discourage future proponents
302 of legislation from inserting a prison sentence just to show
303 how tough and macho the individual congressperson is, that
304 they should have to come to Judiciary on top of whatever
305 other committee has jurisdiction, so that this body, this

306 committee, can slow such efforts down, because it has on
307 both sides of the aisle, both parties have had people
308 thinking they will show how tough they are on an issue by
309 sticking a prison sentence in that.

310 And so, I hope that will be one of the things that we
311 will consider in our efforts to reign this in so that
312 innocent people with no mens rea do not end up being guilty
313 because of over zealousness of legislators.

314 And I yield back. Thank you, Mr. Chairman.

315 Chairman Goodlatte. Would the gentleman yield?

316 Mr. Gohmert. Yes.

317 Chairman Goodlatte. I just want to assure the gentleman
318 and all the members of the committee that the Judiciary
319 Committee has jurisdiction over any legislation brought
320 before the Congress that imposes criminal penalties. And we
321 are carefully watching every bill that is introduced and
322 referred to make sure that we have the opportunity to have
323 input on anything related to the Criminal Code.

324 Mr. Gohmert. And I thank the chairman. What was found
325 in the last 4 years is that a lot of times, it did not come
326 to Judiciary. Even though there was a prison sentence, it

327 just went to the primary committee of jurisdiction. And it
328 is also a reason why it did not end up in 18 U.S.C. It
329 would be somewhere else, which has made it so difficult to
330 figure out just how many Federal crimes there are.

331 Chairman Goodlatte. Those points are very well taken.

332 Mr. Gohmert. So I am proud to have a chairman that is
333 going to zealously watch that, and I appreciate it.

334 Ms. Jackson Lee. Would the gentleman yield from Texas?

335 Mr. Gohmert. Sure.

336 Ms. Jackson Lee. A question. A question to the
337 chairman. Mr. Chairman, will regular order follow that
338 members of the Judiciary Committee will have the opportunity
339 to sit and listen to any hearings that this committee may
340 hold?

341 Chairman Goodlatte. Yeah, I think that would be an
342 appropriate policy for this task force to have. Again, the
343 task force members need to be able to do their work.

344 Ms. Jackson Lee. Right.

345 Chairman Goodlatte. So there will just be the ability
346 to sit in and observe and not participate in the task force.
347 But we would welcome that observation.

348 Mr. Scott. Mr. Chairman?

349 Chairman Goodlatte. The gentleman from Virginia.

350 Mr. Scott. A follow-up question to that, if someone is
351 participating, a member of the Judiciary Committee, but is
352 yielded time by a member of the task force, could they
353 participate?

354 Chairman Goodlatte. That is the approach that we have
355 taken with regard to subcommittee participation, so I would
356 imagine that there would be no objection to proceeding the
357 same way with the task force.

358 Ms. Jackson Lee. Thank you. Thank you. I yield back.

359 Chairman Goodlatte. Are there other members who wish to
360 be recognized?

361 If not, a reporting quorum being present, the question
362 is on adopting the resolution.

363 Those in favor will say aye?

364 Those opposed, no?

365 The ayes have it, and the resolution is adopted.

366 Now, pursuant to notice, I call up H.R. 180 for purposes
367 of markup. And the clerk will report the bill.

368 Ms. Deterding. H.R. 180, to encourage, enhance, and

369 integrate Blue Alert plans through the United States in
370 order to disseminate information when a law enforcement
371 officer is seriously injured or killed in the line of duty.

372 Chairman Goodlatte. Without objection, the bill is
373 considered as read and open for amendment at any point.

374 [The information follows:]

375

376 Chairman Goodlatte. And I will begin by recognizing
377 myself for an opening statement.

378 According to the National Law Enforcement Officers
379 Memorial Fund, a law enforcement in the United States is
380 killed in the line of duty every 57 hours, or one about
381 every other day. This bill helps to reverse that trend when
382 police officers and the public join forces to capture
383 fleeing suspects.

384 Our Nation's law enforcement officers risk their lives
385 every day. They often work long hours in stressful and
386 dangerous conditions and run a high risk of being injured or
387 killed. This bill encourages the expansion of an integrated
388 Blue Alert communications network throughout the United
389 States, which is similar to the well-known amber alert
390 system used to locate missing and abducted children.

391 A Blue Alert broadcasts information and speeds
392 apprehension of criminal -- violent criminals when a law
393 enforcement officer is seriously injured or killed in the
394 line of duty. Like amber alerts, Blue Alerts help hinder an
395 offender's ability to escape and facilitate their capture.

396 The Blue Alert system is a cooperative effort among

397 local, State, and Federal authorities, law enforcement
398 agencies, and the general public. A Blue Alert provides a
399 description of an offender who is still at large and may
400 include a description of the offender's vehicle and license
401 plate information.

402 This bill directs the Department of Justice to designate
403 an existing Department of Justice official as the Blue Alert
404 national coordinator who will encourage those States which
405 have not already done so to develop Blue Alert plans and
406 establish voluntary guidelines. It will remain incumbent on
407 each State to develop its own Blue Alert procedures. As of
408 today, 15 States, including my home state of Virginia, have
409 Blue Alert networks in place. Indiana and Connecticut will
410 implement their networks later this year.

411 An integrated nationwide Blue Alert system ensures that
412 when tragedy strikes, the public is on notice, and suspects
413 can be more quickly apprehended and brought to justice. A
414 nationwide Blue Alert network will be particularly effective
415 when a suspect flees across State lines.

416 This committee has a long history of passing legislation
417 which enhances law enforcement's tools to fight crime, keep

418 Americans safe, and eliminate wasteful government spending.
419 This bill achieves these goals by efficiently using existing
420 DoJ resources to provide enhanced protections to our
421 communities and our law enforcement officers.

422 Too often, criminals in our society have no respect for
423 authority and the rule of law. This bill reaffirms our
424 determination to ensure the future safety of our law
425 enforcement men and women and the communities they serve to
426 protect every day.

427 Supporters of this legislation include the National
428 Fraternal Order of Police, the National Sheriffs
429 Association, the Federal Law Enforcement Officers
430 Association, the Sergeants Benevolent Association, and the
431 National Association of Police Organizations. I want to
432 thank Mr. Grimm of New York and Mr. Reichert of Washington
433 for their work on this bipartisan, bicameral legislation.
434 And I urge my colleagues to support it.

435 Without objection, statements from Mr. Grimm and Mr.
436 Reichert will be made a part of the record. And without
437 objection, letters of support from the above-named
438 organizations will also be made a part of the record.

439 [The information follows:]

440

441 Chairman Goodlatte. And the chair now recognizes the
442 gentleman from Virginia, the ranking member of the Crime,
443 Terrorism, Homeland Security, and Investigations
444 Subcommittee, Mr. Scott, for his opening statement.

445 Mr. Scott. Thank you, Mr. Chairman. And again, I would
446 like to ask unanimous consent that a statement from the
447 ranking member, Mr. Conyers, be made part of the record.

448 Chairman Goodlatte. Without objection, it will be made
449 a part of the record.

450 [The information follows:]

451

452 Mr. Scott. Mr. Chairman, I am pleased that today we are
453 considering this important bill that will make us safer from
454 those who will attack, kill, or seriously injure police
455 officers. H.R. 180 would establish a network of
456 communications in the Department of Justice to issue Blue
457 Alerts to apprehend -- to help apprehend individuals
458 suspected of committing these serious crimes, and would
459 encourage States to establish Blue Alert notification
460 systems.

461 Over a dozen States, including our home State of
462 Virginia, have Blue Alert systems in place to use media
463 broadcasts and roadside message signs to disseminate within
464 their respective borders information giving detailed
465 descriptions about those who are suspected of these crimes.
466 The type of information broadcast includes a description of
467 a suspect's vehicle and license plate number.

468 This bill will assist States in initiating and
469 implementing these programs on a voluntary basis, and would
470 establish the Department of Justice as the facilitator of
471 sharing Blue Alert information among States so that
472 notification may be disseminated across State lines and

473 throughout an entire geographical area, which may be most --
474 which may most reasonably be reached by the suspect.

475 We need to encourage the dissemination of this
476 information because of the seriousness of these crimes and
477 the need to protect the public. I, therefore, urge approval
478 of H.R. 180 by this committee, and yield back the balance of
479 my time.

480 Chairman Goodlatte. I thank the gentleman. If there
481 are other members who would like to make statements, they
482 can seek recognition. And we will also at the same time ask
483 if there are any amendments to H.R. 180.

484 If there are no amendments and no other requests to
485 speak, we will call for a vote.

486 A reporting quorum is present, and the question is on
487 reporting the bill favorably to the House.

488 Those in favor will say aye?

489 Those opposed, no?

490 The ayes have it, and the bill is ordered reported
491 favorably. Members will have two days to submit views.

492 [The information follows:]

493

494 Chairman Goodlatte. Without objection, the bill will be
495 reported as a single amendment in the nature of a substitute
496 incorporated -- oh, that is not applicable.

497 Pursuant to notice, I now call up H.Res. 196 for
498 purposes of mark up. And the clerk will report the
499 resolution.

500 Ms. Deterding. H.Res. 196, supporting the Sixth
501 Amendment to the United States Constitution, the right to
502 counsel.

503 Chairman Goodlatte. Without objection, the resolution
504 is considered as read and open for amendment at any point.

505 [The information follows:]

506

507 Chairman Goodlatte. And I will begin by recognizing
508 myself and the ranking member for opening statements.

509 I support House Resolution 196 introduced by
510 Representative Ted Deutch of Florida, a resolution
511 supporting the Sixth Amendment to the Constitution, the
512 right to counsel, and strategies to improve the criminal
513 justice system to ensure that indigent defendants in all
514 felony cases are adequately represented by counsel.

515 Fifty years ago the Supreme Court in *Gideon v.*
516 *Wainwright* held that providing counsel to indigent
517 defendants is one of the essential requirements of the Sixth
518 Amendment of the United States Constitution. In the Court's
519 opinion, Justice Black stated, "Reason and reflection
520 require us to recognize that in our adversary system of
521 criminal justice, any person hauled into court who is too
522 poor to hire a lawyer cannot be assured a fair trial unless
523 counsel is provided for him. This seems to us to be an
524 obvious truth."

525 Since the *Gideon* decision, the Supreme Court has held
526 that absent a knowing and intelligent waiver, no person may
527 be imprisoned for any offense, whether classified as petty,

528 misdemeanor, or felony, unless he was represented by counsel
529 at his trial. This resolution reaffirms Congress' continued
530 commitment to pursuing fairness in our criminal justice
531 system, and I urge members to support it.

532 And I now recognize the gentleman from Virginia, the
533 ranking member of the Crime Subcommittee, Mr. Scott.

534 Mr. Scott. Thank you, Mr. Chairman. I would ask
535 unanimous consent that a statement by the ranking member,
536 Mr. Conyers, be made part of the record.

537 Chairman Goodlatte. Without objection.

538 [The information follows:]

539

540 Mr. Scott. Mr. Chairman, 50 years ago, the Supreme
541 Court ruled in *Gideon v Wainwright* that defendant Clarence
542 Earl Gideon should have had a lawyer. The Court in -- the
543 Court stated a very -- well, Mr. Gideon said that he wanted
544 a lawyer, and the court said that it was a luxury, not a
545 necessity. And the Supreme Court has ruled since then that
546 -- let's see, who was it? Justice Black stated, "From the
547 very beginning, our State and national constitutions and
548 laws have laid great emphasis on procedural and substantive
549 safeguards designed to ensure fair trials before impartial
550 tribunals in which every defendant stands equal before the
551 law. This noble ideal cannot be realized if the poor man
552 charged with a crime has to face his accusers without a
553 lawyer to assist him."

554 Mr. Chairman, I ask unanimous consent that a recent news
555 article outlining the challenges faced by public defenders,
556 especially under the sequester, be entered into the record.

557 Chairman Goodlatte. Without objection, so ordered.

558 [The information follows:]

559

560 Mr. Scott. And I yield the balance of my time to the
561 chief sponsor of the legislation, the gentleman from
562 Florida, Mr. Deutch.

563 Mr. Deutch. I thank the gentleman. H.R. 196 is a
564 bipartisan resolution that the House of Representatives
565 supports the Sixth Amendment to the U.S. Constitution, the
566 right to counsel. In addition, the resolution provides the
567 House of Representatives support strategies to improve the
568 criminal justice system to ensure that indigent defendants,
569 people who cannot afford an attorney, are adequately
570 represented by counsel in all felony cases.

571 Fifty years ago, the Supreme Court recognized in the
572 landmark case of *Gideon v. Wainwright* that counsel must be
573 provided to indigent defendants in all felony cases. The
574 unanimous opinion of the Court held that providing counsel
575 to indigent defendants in all felony cases meets the
576 essential requirements of the Sixth Amendment.

577 In *Argersinger v. Hamlin*, the Supreme Court further held
578 that the Sixth Amendment right to counsel entitles an
579 indigent person to be represented by counsel in all cases
580 where imprisonment is a possibility. Fifty years later, our

581 Nation continues to struggle to ensure that indigent
582 criminal defendants have access to quality representation in
583 the courtroom.

584 Representation for the indigent has been undermined by
585 crushing caseloads that make it nearly impossible for
586 lawyers to provide quality counsel for each trial. In these
587 difficult economic times, States have also been forced to
588 slash their budgets, causing funding for indigent defendants
589 to be substantially cut or eliminated. In addition, counsel
590 representing indigent defendants have been unable to access
591 investigators or experts that are essential to provide
592 adequate defense.

593 The Supreme Court recognized in *Gideon* that the right of
594 one charged with crime to counsel may not be deemed
595 fundamental and essential to fair trials in some countries,
596 but it is in ours. And yet in many parts of the country,
597 the fundamental right of an indigent person to be
598 represented by counsel is not being respected. Justice
599 Sotomayor pointed out in a lengthy dissent and dismissal of
600 writ in *Boyer v. Louisiana* that the Louisiana Supreme Court
601 has suggested that a failure to provide funding to the

602 State's indigent defense system is contributing to extended
603 pre-trial detentions.

604 This morning the Judiciary will, I hope, through this
605 bill make clear that we support strategies to ensure that
606 the right to counsel that *Gideon* trumpets is protected.

607 I would like to thank Chairman Goodlatte for bringing up
608 this resolution in the committee and for your support of the
609 Sixth Amendment. I would also like to thank Congressman
610 Chabot for all of his hard work on this resolution and for
611 working to ensure that indigent people in the criminal
612 justice system are represented by counsel. Finally, I would
613 like to thank Ranking Member Conyers and Crime Subcommittee
614 Ranking Member Scott for their support of strategies to
615 improve indigent defense system.

616 I urge support for H.Res. 196, and I yield back the
617 balance of my time.

618 Chairman Goodlatte. I thank the gentleman for his
619 remarks and for bringing forward this resolution.

620 And for what purpose does the gentleman from South
621 Carolina seek recognition?

622 Mr. Gowdy. Move to strike the last word and seek 5

623 minutes.

624 Chairman Goodlatte. The gentleman is recognized for 5
625 minutes.

626 Mr. Gowdy. Mr. Chairman, I do not mean to be any more
627 difficult than I normally am, and of course I support the
628 Sixth Amendment which incidentally enough stands for a whole
629 lot of propositions, not just the right to counsel.

630 If this resolution were simply to affirm what we all
631 believe, which is that you have a right to counsel not only
632 in felony cases now, but also in misdemeanor cases, I would
633 not have sought time. But it seems from some of the
634 comments made on the other side of the aisle that this has
635 become an indictment on sequestration, and that we want to
636 talk about Federal -- public defenders being cut when the
637 reality is the FBI has been cut, the United States
638 Attorney's Office has been cut, State DA's offices are
639 furloughing employees.

640 So my question is this: specifically with respect to
641 prong number two, "support strategies to improve the
642 criminal justice system," who in the world could possibly be
643 opposed to that? But not wanting to be successful there and

644 stop, "to ensure the indigent defendants in all felony cases
645 are adequately represented by counsel." I am not aware of
646 any cases where they are not. I think there have been three
647 attorneys that have been appointed for the bomber in Boston,
648 Mr. Chairman, if I am not mistaken.

649 So if this is about sequestration and just another
650 effort to highlight that, there are plenty of prosecutors
651 that are being cut, plenty of law enforcement. If this is
652 to affirm your right to counsel, count me in. If it is more
653 than that, which is what it sounds like to me -- we got a
654 bunch of amendments. I mean, let's affirm the Eighth.
655 Let's affirm the Fourth.

656 So I guess my question is, why the Sixth?

657 Mr. Scott. Would the gentleman yield?

658 Mr. Gowdy. And why do we have to inject politics into
659 something where we are supposed to be memorializing and
660 commemorating and celebrating an amendment to the
661 Constitution?

662 Mr. Scott. Would the gentleman yield?

663 Mr. Gowdy. Certainly.

664 Mr. Scott. I think the purpose of this resolution is to

665 celebrate the 50th anniversary. It is not unusual to
666 celebrate anniversaries of important measures, and the
667 *Gideon* decision, I think was a landmark decision. And that
668 is why it is being done today.

669 Mr. Gowdy. Well, the gentleman from Virginia knows that
670 there is not a member of this body that I have more respect
671 for than him. And if he tells me that, then I am inclined
672 to believe it. But I can also say that I just heard talk
673 about sequestration, and cutting budgets, and that is not
674 *Gideon v. Wainwright*. And cops and prosecutors and everyone
675 else have been cut, too.

676 So I take the gentleman from Virginia at his word.
677 There is no one in this body whose opinion I respect more,
678 and if he says it is to celebrate *Gideon v. Wainwright*, I
679 believe him. But I heard more than that from the other side
680 of the dais just a few minutes ago.

681 And with that, Mr. Chairman, I will be happy to yield
682 back.

683 Chairman Goodlatte. Well, the gentleman's observations
684 are pertinent, and I would just say to the gentleman that we
685 have carefully examined the language of this to make

686 absolutely sure that it does just as the gentleman from
687 Virginia suggested, celebrates the Sixth Amendment right to
688 counsel as recognized in the case of *Gideon v. Wainwright*,
689 and not to get into issues of how that is fulfilled by the
690 Federal government and by State governments.

691 And the gentlewoman from Texas is recognized.

692 Ms. Jackson Lee. Thank you, Mr. Chairman. I want to
693 congratulate the sponsor of the bill, the gentleman from
694 Florida, and also our fellow Judiciary Committee member, Mr.
695 Chabot, who I know has read the bill's two pages and sees
696 the four corners of the bill is not only the acknowledgement
697 of *Gideon v. Wainwright*, which I think is a very important
698 interpretation of this -- of the Sixth Amendment.

699 And I think I would like to focus on the importance of
700 the indigent having effective counsel, which is what has
701 generated out of that decision, and that is an important
702 statement because it equalizes the criminal justice system,
703 and it suggests that no matter what your economic condition,
704 under our Constitution you are not diminished from the
705 rights of a fair trial and effective counsel.

706 I would like to offer into the record just information

707 about an individual by the name of Willie Jerome Manning,
708 who is scheduled today for execution, and a simpler request
709 was made for DNA testing. We do not know what the ultimate
710 results will be of his fate, but I can assure this body that
711 the re-emphasis on the Sixth Amendment ties into ensuring
712 that fairness goes to all from those who have perpetrated
713 non-heinous crimes to those who have perpetrated heinous
714 crimes. And it is not a judgment of their physical or their
715 financial ability to be able to, if you will, have effective
716 counsel.

717 So I want to support this legislation on the grounds of
718 so many constituents that I have seen in my jurisdiction who
719 have suffered incarceration primarily because they have not
720 had counsel, effective counsel. And I think the Sixth
721 Amendment emphasizes that.

722 And finally I would like to congratulate the resolution
723 because it adds to have support strategies to improve the
724 criminal justice system, to ensure that indigent defendants
725 in all felony cases are adequately represented by counsel.

726 I think this commendable and certainly worthy of the
727 Judiciary Committee's work. And I support it and ask our

728 colleagues to support it.

729 With that, I yield back.

730 Chairman Goodlatte. I thank the gentlewoman.

731 What purpose does the gentleman from Pennsylvania seek
732 recognition?

733 Mr. Marino. Move to strike the last word.

734 Chairman Goodlatte. The gentleman is recognized for 5
735 minutes.

736 Mr. Marino. If my good friend from Florida, his intent
737 behind this resolution is to commemorate one of the
738 cornerstones of the jurisprudence system, I support him
739 wholeheartedly. If this is a death penalty argument, then
740 we have a different issue here, and we are going off into an
741 area where I think it is getting very, very from what my
742 friend from Florida intended.

743 And if you would respond to that.

744 Mr. Deutch. I would be happy to. We can have a debate
745 on this dais about the death penalty and any other topic.
746 The resolution that we are discussing now, the resolution
747 that I have introduced is one that commemorates the 50th
748 anniversary of *Gideon*. That is what it does. It is very

749 clear about that. And the chairman has been very kind to
750 work with us to ensure that it does no more than that.

751 Mr. Marino. And I just needed reinforcement from my
752 friend from Florida. But let me make this point perfectly
753 clear. I have prosecuted thousands of cases from the State
754 level to the Federal level. And particularly at the Federal
755 level, before an attorney can be hired, a defense attorney
756 can be hired, a Federal public defender, the judges, the
757 Federal court has to approve that and has to approve that
758 those individuals, he or she is competent.

759 And I have had many situations where it has been raised
760 that the expense of an investigation on the defense side
761 where the courts have ruled, rightly so, expense has nothing
762 to do with it. We have to supply, and offer, and make
763 certain that defendants who are charged have adequate
764 counsel, regardless of what the cost is, regardless of how
765 many investigators are required and needed.

766 So with that, I want to just --

767 Ms. Jackson Lee. Would the gentleman yield?

768 Mr. Marino. Certainly.

769 Ms. Jackson Lee. I thank the gentleman, and I

770 appreciate the gentleman's both service and while -- and I
771 do want to reaffirm that the gentleman from Florida's
772 resolution stands on its own. All I see in that is the
773 affirmation of Gordon -- of the *Wainwright* case.

774 But I do want to emphasize and join with the gentleman
775 from Pennsylvania that he is right, and I think the Supreme
776 Court case upon which we are honoring in this resolution has
777 laid the groundwork for such to happen during the tenure of
778 my practice, during the tenure of the gentleman's practice,
779 is that we do work to ensure that those without means have
780 effective counsel. And I think that lawsuit Supreme Court
781 case, and now the acknowledgment of it, is worthy of the
782 Judiciary Committee because it has made changes, such as
783 those that you have just enunciated in your practice.

784 With that, I will yield back.

785 Mr. Marino. Thank you. And in closing, I have had
786 situations where defendants have just simply argued with the
787 court saying I will represent myself. And as a prosecutor
788 at both levels, we have insisted with the court, and they
789 follow through with it, that even though a defendant wants
790 to go pro se, there is backup counsel there sitting right

791 with that individual to make sure that he is not or she is
792 not making mistakes that could jeopardize their case.

793 With that, I yield back.

794 Chairman Goodlatte. Will the gentleman yield?

795 Mr. Marino. Yes.

796 Chairman Goodlatte. I thank the gentleman for yielding.

797 I just want to assure the gentleman that the intention of
798 this resolution is to honor the good work that you and
799 Congressman Gowdy and others who have been so involved in
800 the criminal justice system have -- the diligent effort that
801 has been made to honor that principle in the Sixth Amendment
802 and not to cast aspersions upon it.

803 Obviously as we can see here today, there are
804 differences of opinion about what needs to be done to assure
805 that, but this is only about celebrating the fact that we do
806 assure that. And you and others have played a role in doing
807 that, and we thank you for that.

808 Mr. Chabot. Mr. Chairman?

809 Chairman Goodlatte. Who seeks recognition? The
810 gentleman from Ohio, for what purpose do you seek
811 recognition?

812 Mr. Chabot. Move to strike the last word.

813 Chairman Goodlatte. The gentleman is recognized for 5
814 minutes.

815 Mr. Chabot. Thank you, Mr. Chairman. I will not take
816 the 5 minutes. I just wanted to make very clear that if
817 this resolution in any way reflected opposition to the death
818 penalty, my name would not be on it. I think Mr. Scott
819 knows that.

820 And I was a defense attorney for quite a few years prior
821 to this, had capital case and other things as well. And I
822 think we worked in good faith with the folks on the other
823 side of the aisle on this issue. And it was just to
824 celebrate the 50th anniversary of *Gideon v. Wainwright*,
825 which was critical in criminal law history.

826 And so that is what it is about. And members are free
827 to take their time to talk about various issues. I do not
828 think we have any problem with that, but I just want to make
829 sure that this does not in any way reflect opposition of the
830 death penalty, nor does it represent on the other side of
831 the aisle folks in favor of the death penalty either.

832 So I yield back.

833 Chairman Goodlatte. I thank the gentleman for his
834 comments, and I subscribe to them.

835 Are there further requests for recognition?

836 Are there any amendments?

837 Mr. Johnson. Mr. Chairman?

838 Chairman Goodlatte. For what purpose does the gentleman
839 from Georgia seek recognition?

840 Mr. Johnson. Move to strike the last word.

841 Chairman Goodlatte. The gentleman is recognized for 5
842 minutes.

843 Mr. Johnson. I would just add that the right to counsel
844 entails the right to effective counsel. And effective
845 counsel means quite a bit here, and I think we should all
846 keep that in mind as well.

847 With that, I will yield back.

848 Chairman Goodlatte. I thank the gentleman for his
849 comments.

850 Are there any further requests for recognition?

851 Are there any amendments?

852 If not, a reporting quorum being present, the question
853 is on reporting the resolution favorably to the House.

854 Those in favor will say aye?

855 Those opposed, no?

856 The ayes have it, and the resolution is ordered reported
857 favorably.

858 Members will have 2 days to submit views.

859 [The information follows:]

860

861 Ms. Jackson Lee. Mr. Chairman?

862 Chairman Goodlatte. For what purpose does the
863 gentlewoman from Texas seek recognition?

864 Ms. Jackson Lee. I ask unanimous consent to speak out
865 of order for one minute, please.

866 Chairman Goodlatte. Without objection, the gentlewoman
867 is recognized for 1 minute.

868 Ms. Jackson Lee. Thank you, Mr. Chairman. I did not
869 want to speak on the time frame of the gentleman from
870 Florida's bill. I am the one that raised the question of
871 the death penalty, and I want to clarify the record that I
872 -- hopefully we will have a discussion about the death
873 penalty. Maybe we will have a hearing on it.

874 But the point that I wanted to make is the point on
875 effective counsel. The individual in Mississippi has been
876 denied the use of DNA evidence, and so that had to tie into
877 counsel, which I think all of us have a unified view of.
878 And I imagine the gentleman was indigent.

879 And so maybe someday in this particular Judiciary
880 Committee, Mr. Chairman, we will have that vigorous debate
881 and discussion about the death penalty. Some of us would

882 argue the point that -- unite against the death penalty.
883 Some will argue that they are for it. But all of us can say
884 that you want the person that happens to get the sentence
885 to, in fact, actually be guilty beyond a reasonable doubt.

886 That was the point that I was making as it relates to
887 effective counsel, and I am delighted that the gentleman's
888 resolution has passed. And I thank the chairman for
889 allowing me to clarify my comments, not to infringe upon the
890 gentleman's resolution.

891 With that, I yield back.

892 Chairman Goodlatte. I thank the gentlewoman for her
893 comments.

894 This concludes our business for today. Thanks to all of
895 you for attending.

896 The meeting is adjourned.

897 [Whereupon, at 10:53 a.m., the committee was adjourned.]