

1 MORNINGSIDE PARTNERS, LLC

2 MARKUP OF H.R. 5057, THE "DEBBIE SMITH

3 REAUTHORIZATION ACT OF 2008";

4 H.R. 2352, THE "SCHOOL SAFETY ENHANCEMENTS

5 ACT OF 2007";

6 H.R. 1783, THE "ELDER JUSTICE ACT";

7 H.R. 5352, THE "ELDER ABUSE VICTIMS

8 ACT OF 2008";

9 AND H.R. 4044, THE "NATIONAL GUARD AND

10 RESERVIST DEBT RELIEF ACT OF 2008"

11 Wednesday, June 11, 2008

12 House of Representatives,

13 Committee on the Judiciary,

14 Washington, D.C.

15 The committee met, pursuant to call, at 10:25 a.m., in Room

16 2141, Rayburn House Office Building, Hon. John Conyers

17 [chairman of the committee] presiding.

18 Present: Representatives Conyers, Berman, Nadler,  
19 Scott, Watt, Lofgren, Jackson Lee, Waters, Sanchez, Cohen,  
20 Johnson, Sutton, Sherman, Baldwin, Weiner, Schiff, Wasserman  
21 Schultz, Smith, Sensenbrenner, Coble, Gallegly, Goodlatte,  
22 Chabot, Lungren, Cannon, Keller, Issa, Pence, Forbes, King,  
23 Gohmert, and Jordan.

24 Staff present: Perry Apelbaum, Majority Staff  
25 Director/Chief Counsel; George Slover, Majority Legislative  
26 Counsel/Parliamentarian; Sean McLaughlin, Minority Chief of  
27 Staff/General Counsel; Allison Halataei, Minority Deputy  
28 Chief of Staff/Parliamentarian; and Anita L. Johnson, Clerk.

29 Chairman Conyers. [Presiding.] Good morning. Pursuant  
30 to notice, I call up H.R. 5057, the Debbie Smith  
31 Reauthorization Act, for purposes of markup.

32 [The bill follows:]

33 \*\*\*\*\* INSERT \*\*\*\*\*

34 Chairman Conyers. When we left off at our last markup,  
35 a manager's substitute amendment by Chairman Bobby Scott was  
36 pending. We had two second degree amendments, one by Anthony  
37 Weiner and one by Adam Schiff and Dan Lungren.

38 We expect that there may be others to consider.

39 Are there any other amendments to the substitute?

40 Mr. Schiff, the gentleman from California, is  
41 recognized.

42 Mr. Schiff. Mr. Chairman, I have an amendment at the  
43 desk.

44 Chairman Conyers. The clerk will report.

45 The Clerk. Amendment to the amendment in the nature of  
46 a substitute to H.R. 5057 offered by Mr. Schiff of  
47 California. After section three, add-

48 Chairman Conyers. Without objection, the amendment is-

49 Mr. Scott. Mr. Chairman, could you read a little  
50 further so we can make sure we have the right one?

51 Chairman Conyers. All right.

52 Mr. Scott. Just a little further.

53 The Clerk. After section 3, add the following new  
54 section, Section 4: Additional Study and Report (a)  
55 Investigations and Prosecutions Related to CODIS "Hits".  
56 Number (1) Study. The Inspector General of the Department of  
57 Justice shall-

58 [The amendment by Mr. Schiff follows:]

59 \*\*\*\*\* INSERT \*\*\*\*\*

60 Mr. Scott. Mr. Chairman, I move we waive the continued  
61 reading.

62 Chairman Conyers. All right. Without objection, the  
63 amendment is considered as read.

64 And the distinguished gentleman from California is  
65 recognized in support of his amendment.

66 Mr. Schiff. Thank you, Mr. Chairman. I will be brief.  
67 The federal government is not always able to determine how  
68 many hits are made in the DNA database that they inform  
69 states about are actually followed up on by law enforcement.  
70 I think this data would be very important for policy makers  
71 to have.

72 A few years ago, USA Today engaged in a comprehensive  
73 examination of DNA cases. In one case, the DNA of a  
74 convicted child molester matched DNA from an attempted sexual  
75 assault of a 10-year-old girl.

76 Police did not contact the offender until after he had  
77 molested another 10-year-old child 6 months later.

78 In another case, the DNA of a career felon matched DNA  
79 left at a rape and abduction in 2001. At the time the  
80 offender was serving a prison sentence for assault.

81 The police did not contact him until 8 months later,  
82 after he had been released from prison, and only after being  
83 alerted by the rape victim, who encountered the offender by  
84 chance while walking in a local park.

85           These disturbing examples demonstrate the need to  
86 research this issue. My amendment would direct the DOJ I.G.  
87 to investigate and report on how many CODIS database hits are  
88 followed up on by law enforcement, how many of those hits are  
89 ultimately brought to the attention of a prosecutor and how  
90 many go to trial.

91           Importantly, the report will also shed additional light  
92 on the factors at play in the event that matches were not  
93 followed up on.

94           In particular, we ask the I.G. to determine the reasons  
95 why matches were not pursued accordingly and to determine the  
96 resulting impact on the criminal justice system—namely,  
97 whether other crimes were committed that could have been  
98 prevented if the matches were pursued diligently.

99           I urge the committee to support the amendment and yield  
100 back the balance of my time.

101           Chairman Conyers. I thank the gentleman.

102           Yes, Dan Lungren?

103           Mr. Lungren. Mr. Chairman, I rise in support of the  
104 amendment and ask to strike the requisite number of words.

105           Chairman Conyers. The gentleman is recognized.

106           Mr. Lungren. Mr. Chairman, I think this is a good  
107 amendment for a number of reasons. One is that this is a  
108 relative—I mean, relatively speaking, this is a new  
109 technology, a new device, that is being used in extraordinary

110 ways.

111       When we first embarked on it out in California with our  
112 state department of justice, we ran into a situation where we  
113 were collecting DNA samples but we didn't have sufficient  
114 funds to actually analyze them, so we had a potential bank  
115 that was not being utilized.

116       We managed to work that out with the support of the  
117 state legislature and then, later, the federal government has  
118 come in to assist in this.

119       And I can recall vividly the excitement we had when we  
120 had the first cold hit in our department dealing with someone  
121 who was being held in an incarceration facility somewhere in  
122 the Midwest, which solved a brutal crime that occurred in  
123 California some years before.

124       And we have gone from that to this now being somewhat of  
125 a matter-of-fact approach that people accept for its ability  
126 both to exonerate suspects but also to identify potential  
127 defendants in cases that otherwise would remain unaccounted  
128 for.

129       And so I think the gentleman's amendment is worthy, in  
130 that we really need to know where we are on that journey  
131 toward successfully making sure that all of the jurisdictions  
132 are working together with the federal government, allowing us  
133 to, in many cases, not only discover who the perpetrators of  
134 crimes were, but in the process of identifying those people

135 stopping them before they commit further crimes.

136       So I would hope that we would have support for the  
137 gentleman's amendment.

138       Mr. Scott. Mr. Chairman?

139       Chairman Conyers. I thank the gentleman and recognize  
140 Bobby Scott.

141       Mr. Scott. Move to strike the last word. Thank you,  
142 Mr. Chairman. I support the initiative. There is sometimes  
143 a disconnect between the hits being made and what happens to  
144 that particular hit.

145       This is a very powerful tool, and this amendment will  
146 help ensure that the full potential of this tool is realized.  
147 So I hope we would adopt the amendment. I yield back. Thank  
148 you.

149       Mr. Gohmert. Mr. Chairman?

150       Chairman Conyers. I recognize Judge Gohmert.

151       Mr. Gohmert. Thank you, Mr. Chairman. I rise in  
152 support of the amendment and seek to be uncharacteristically  
153 brief, if I might.

154       Chairman Conyers. I will believe it when I hear it.

155       Mr. Gohmert. Well, there has been a number of  
156 amendments discussed in leading up to this hearing regarding  
157 potential amendments requiring different types of reports.

158       This is one which actually will give us a good idea,  
159 basically a report card, on whether the programs that we are

160 assisting are actually helping. And that would be a good  
161 thing.

162 So it will inform Congress the number of times DNA  
163 samples from the backlog are matched with samples, including  
164 the FBI Combined DNA Index System, and therefore we will be  
165 able to know if we have done good or not.

166 I think it will do a great deal of good, and I think  
167 this is a good report card, and I ask my colleagues to  
168 support it.

169 Thank you. I yield back.

170 Chairman Conyers. I thank the gentleman, and I believe  
171 it.

172 Anyone else?

173 All those in favor of reporting the amendment to the  
174 substitute, please indicate by saying "aye." All those  
175 opposed, say "no." "Ayes" have it. So ordered.

176 Are there other amendments?

177 Yes, the gentleman from New York, Mr. Weiner?

178 Mr. Weiner. I have an amendment at the desk. It is  
179 Weiner-05.

180 Chairman Conyers. The clerk will report the amendment.

181 The Clerk. Amendment to the amendment in the nature of  
182 a substitute to H.R. 5057 offered by Mr. Weiner, Mr. Nadler-

183 [The amendment by Mr. Weiner, Mr. Nadler and Mr. Lungren

184 follows:]

185 \*\*\*\*\* INSERT \*\*\*\*\*

186 Mr. Weiner. Mr. Chairman, I request unanimous consent  
187 it be accepted as read.

188 Chairman Conyers. Without objection, and the gentleman  
189 is recognized.

190 Mr. Weiner. First of all, Mr. Chairman, forgive me for  
191 my Brenda Vaccaro impression. I still haven't gotten my  
192 voice back from the Puerto Rican Day parade this weekend.

193 This amendment addresses the notion that most states, an  
194 overwhelming number of them, take DNA samples from all  
195 convicted felons and, in addition, take—and take uploaded  
196 samples from all felons who are in their jails.

197 But there are some states who have not yet done one of  
198 those two things, either added every felony to their list of  
199 state laws that require a DNA sample to be taken from a  
200 convict, or not gone back to their population, prison  
201 population, and taken DNA samples from every felon there.

202 Why does this matter? It matters because those states  
203 that are doing those things, that are uploading all their  
204 offender database—samples to the database are giving the  
205 states that are not an advantage of their population while  
206 not contributing the same back to the base of knowledge that  
207 makes up the database.

208 The states that would be affected by my amendment, which  
209 would require that all states within 2 years do both of those  
210 things—begin to collect if they don't already for all felons,

211 and furthermore go back and make sure that the prison  
212 population is collected.

213       The states that don't, that are in those two categories--  
214 the states that do not collect DNA from convicted felons  
215 presently--New Hampshire, Nebraska and Idaho. We are talking  
216 about about 2,000 people in New Hampshire, 3,000 in Nebraska  
217 and 2,000 in Idaho.

218       States that do not retroactively collect from all  
219 convicted felons in their prison population are as follows--  
220 Delaware, Idaho, Montana, Nevada, New Hampshire, Rhode  
221 Island, Tennessee, Texas and West Virginia.

222       Now, in varying degrees those states are in the process  
223 of starting to do this--not all of them, but some of them are.  
224 And my amendment is very simple. It says, "If you want to  
225 take advantage of this money that we are making available in  
226 this bill, then you have to--all states should be in the same  
227 situation."

228       We can't have a situation where Wisconsin or Michigan  
229 says, "We are going to go through the expense, we are going  
230 to go through the effort, to take these offender samples,"  
231 and by the way, this is the least expensive side of matching  
232 evidence with the database.

233       The offender samples are a relatively inexpensive  
234 process. You take a swab. It is a more mechanized process  
235 of getting the DNA uploaded.

236           Congressman Nadler, Congressman Lungren and myself, and  
237 many others on this committee—Congressman Schiff, I believe—  
238 put this amendment together with the idea of just making sure  
239 everyone is on the same playing field. It gives a reasonable  
240 amount of time for states to come into compliance—2 years.

241           And I urge my colleagues to accept it. It is supported,  
242 obviously, by Debbie Smith, by the National Center for  
243 Victims of Crime, and by many other law enforcement  
244 organizations.

245           I think it is a relatively modest amendment that  
246 essentially makes all states who are going to be eligible for  
247 these grants—essentially gives them the same playing field.

248           And I yield back my time.

249           Chairman Conyers. I thank the gentleman.

250           Mr. Gohmert. Mr. Chairman?

251           Chairman Conyers. Judge Gohmert?

252           Mr. Gohmert. Thank you, Mr. Chairman. I move to strike  
253 the last word regarding this amendment.

254           Chairman Conyers. Without objection, and the gentleman  
255 is recognized.

256           Mr. Gohmert. This may be the first in a series of  
257 amendments which tacks on things to the Debbie Smith bill, or  
258 the Debbie Smith program, and I just want to remind everybody  
259 the program is to provide funds to help decrease or reduce  
260 the backlog of DNA analyses.

261 And so the program that my friend from New York is  
262 suggesting, with a number of people involved—and I understand  
263 Ms. Maloney is not opposing the amendment.

264 But apparently we are going to have a series of  
265 amendments that tack on additional things that are not only  
266 not going to reduce the backlog, they are going to add  
267 additional work to the backlog.

268 And as my friend from New York indicated, there are only  
269 three states that do not collect DNA samples from newly  
270 convicted felons. Eleven states do not collect samples from  
271 incarcerated felons.

272 But the Debbie Smith program is such a good program. It  
273 seeks to do so much good in reducing the backlog that I hate  
274 to see us putting too many incentives to disregard the  
275 backlog and go with new processes that were not there before,  
276 and therefore not give the relief to those who have been  
277 waiting protracted lengths of time to get their analysis.

278 Mr. Weiner. Would the gentleman yield?

279 Mr. Gohmert. I certainly will, sure.

280 Mr. Weiner. I just want to correct one thing and then  
281 just address the gentleman's legitimate point.

282 The thing I would correct is that the states that are  
283 impacted—many of them, like yours, for example—do go into the  
284 prison population and check felons, just not all of them.  
285 They have excluded some felons and included some others.

286 But remember, let's keep an eye on this from 30,000  
287 feet. It is not just the abstract notion of clearing out the  
288 backlog. It is catching rapists. It is catching rapists.  
289 So the more people that we have in the database, the greater  
290 likelihood that a rapist will be caught, because, as you  
291 know, it is a recidivist crime.

292 So we have to be careful not to stare at a tree and  
293 forget the forest. The reason we added by a previous  
294 amendment funds for sexual abuse nurse examiners was that so  
295 someone could collect evidence that might help convict  
296 someone.

297 The reason that we are doing this is to make sure that  
298 we are not putting in one side of the transaction—the  
299 evidence—and excluding the people who might most likely do  
300 the crime, which are people sitting in a Michigan, Wisconsin  
301 or New York prison already.

302 That is where the overwhelming number of hits are coming  
303 from, the prison population. So we mustn't lose sight of  
304 this.

305 The Debbie Smith Act is not about the notion of doing  
306 the tests. It is about catching rapists.

307 Mr. Gohmert. Thank you, and reclaiming my time.

308 And I certainly appreciate that point, and I don't lose  
309 sight of the fact that also the DNA backlogs that have yet to  
310 be examined are the ones most likely—because that is why they

311 have these backlogs. They are thinking these will contribute  
312 to catching the perpetrators on individual cases.

313 And I am concerned that we have come in with a rush of  
314 new things to analyze. Then the old cases with old victims  
315 which may be the most likely perpetrators get further delayed  
316 with the new things coming in.

317 And I would just—

318 Mr. Weiner. Well, would the gentleman yield?

319 Mr. Gohmert. Well, let me just say I hope that we could  
320 work together before this gets to the floor to try to come up  
321 with a solution. So I am not opposing the amendment,  
322 necessarily. Some of them I will.

323 But I would hope that we could work together to make  
324 sure that the old cases, the old DNA samples that may be the  
325 most likely perps, don't get shoved to the side.

326 Mr. Weiner. Yes, but I just—would the gentleman yield  
327 one further—

328 Mr. Gohmert. Sure.

329 Mr. Weiner. I just want to make sure the gentleman  
330 understands what we are talking about here.

331 There is two universes of evidence.

332 Mr. Gohmert. Oh, I understand what you are—

333 Mr. Weiner. One is the evidence kit, but I would just  
334 remind the gentleman you can test those till you are blue in  
335 the face, get a DNA profile. If you have nothing to match

336 them to, human beings that have similar DNA, you are not  
337 doing anything. So you can't just do one or the other.

338 And by the way, yes, this is old, that is new—the  
339 evidence kit that was waiting for 18 months may be linked to  
340 an offender that just got arrested yesterday.

341 If we don't take that person's DNA, if that person gets  
342 arrested for a felony in New Hampshire rather than a felony  
343 in New York, and their DNA is not uploaded, it is really not  
344 fair to that woman who has been victimized to say, "Okay, we  
345 are not really interested in people who commit rape in New  
346 Hampshire, only in New York."

347 Mr. Gohmert. Well, reclaiming my time, because it is  
348 about to expire—

349 Mr. Weiner. Certainly.

350 Mr. Gohmert. —I am just saying, as a judge, nothing is  
351 more offensive to me than to be waiting on DNA results and  
352 say somebody rushed in from the federal government and said  
353 something else had higher priority, so ours got pushed back  
354 and our victim has to wait even longer.

355 So I understand the thrust of this program. I just  
356 would like to make sure that we don't further victimize  
357 folks. I think it is a good idea, but I just don't want the  
358 victims to be further hurt by a good idea for the future.

359 Thank you. I yield back.

360 Chairman Conyers. Members of the committee, Lamar Smith

361 and I have agreed to suspend on this matter since we have a-  
362 wait a minute, we can vote this out.

363 Is there any further discussion?

364 Mr. Scott. Mr. Chairman?

365 Ms. Jackson Lee. I have an amendment.

366 Chairman Conyers. To this?

367 Mr. Scott. To this amendment.

368 Chairman Conyers. Okay. All right. What is the  
369 amendment? Do you want to report it now?

370 Mr. Scott. No, I want to be recognized to speak on the  
371 amendment.

372 Chairman Conyers. Oh, wait a minute. Let's have a vote  
373 on-

374 Mr. Scott. I would like to speak on this amendment.

375 Chairman Conyers. Okay.

376 Mr. Scott. On the Weiner amendment.

377 Chairman Conyers. All right.

378 Mr. Scott. And if you want to suspend before I speak,  
379 then that is-whatever.

380 Chairman Conyers. Well, let's see if we can finish it.  
381 I think there are enough members that will stay for-

382 Ms. Jackson Lee. And I have an amendment.

383 Mr. Scott. Just very briefly, Mr. Chairman. I really  
384 regret that I find myself in agreement with the ranking  
385 member of the subcommittee on this issue.

386           And I agree with the gentleman from New York that we  
387 should collect samples from all convicted felons. As he has  
388 indicated, virtually every state does it already, so it is  
389 really not a big deal for most of the country.

390           But making it a requirement under the Debbie Smith Act I  
391 believe is untimely, and it would be more appropriate to  
392 address this issue when we address permanent changes in the  
393 Innocence Protection Act in its post-conviction DNA testing  
394 provision.

395           The purpose of the Debbie Smith Act is an initiative to  
396 eliminate the DNA sample backlog. This amendment would  
397 actually add to the backlog because you have got a finite  
398 amount of capacity.

399           If you move something in front of the line, something  
400 else is going to get pushed to the back of the line because  
401 we have no more—we have got a finite capacity. So it  
402 actually runs counter to the purposes of the bill.

403           For that reason, Mr. Chairman, I would oppose the  
404 amendment and yield to the gentleman from New York.

405           Mr. Weiner. I thank the chairman. Let me just first  
406 address the last point first.

407           There is a different technology, a different machine, a  
408 different production line, when you are taking a series of  
409 swabs all in a place and winding them through a machine.  
410 That is why it is so much less expensive. So it is not in

411 any way going to add to the backlog of evidence kits.

412         And we have done further things in this bill to increase  
413 technology grants to add capacity for just this reason.

414         Secondly, let me just say it would be of small  
415 consolation to a woman who has her evidence kit that has been  
416 sitting for a year finally get analyzed if the information  
417 goes into a deficient database to match it up with.

418         What if the person that raped her, raped her 6 months  
419 ago, and then moved to New Hampshire and got arrested? What  
420 if they are in a prison population today, in a prison  
421 population, and we haven't gone back and swabbed like your  
422 state does?

423         Why is it fair for Virginia or for New York to take this  
424 burden on themselves to expand their database, their offender  
425 database, if some states are going to say, "We are going to  
426 go get the federal money, and we are not going to do those  
427 things?"

428         And I just want to make very clear, nothing in this  
429 amendment puts anything over anything. All it does is say  
430 states have certain minimum responsibilities. If they want  
431 to take advantage of this database, they have to contribute  
432 to the database in equal fashion.

433         All I am saying here is there should be parity between  
434 New Hampshire and Virginia. Why should Virginia be penalized  
435 for taking a burden upon itself to test its whole offender

436 database—by the way, something 47 states do—and three states  
437 should say, "Okay, we are not going to go ahead and do that,  
438 but we are still going to apply for the Debbie Smith money?"

439       And one final thing, just so we understand, because Mr.  
440 Gohmert at the end again implied a false choice. We have two  
441 silos of information—evidence kits collected at rape scenes,  
442 evidence kits including pieces of material, hair, swabs,  
443 collected at the scene.

444       Then you have a second thing that you are trying to link  
445 it up with, which is who did it. And those are the swabs  
446 taken in virtually every single state and every single  
447 offender sitting in a prison.

448       And all I am saying is there is a small amount of  
449 people, a small amount of prison offenders, a small amount of  
450 felons, who are not getting swabbed and tested. Why? It  
451 doesn't make sense with respect to these states.

452       And the notion we are adding to the backlog—take a step  
453 back and remember what the Debbie Smith Act is all about. It  
454 was about victims of crime finding justice, not just  
455 shuffling paperwork—we can get the database down—the backlog  
456 of crime scenes down to zero if we want to. We can  
457 theoretically test no offenders.

458       Mr. Scott. Reclaiming my time, I just reiterate that it  
459 is no more frustrating to have somebody who could identify a  
460 rapist 6 months ago than one 6 years ago, and the stuff has

461 been sitting up on the shelf all that time.

462       This bill is designed to get rid of the backlog. That  
463 is the silo we are addressing. I agree with the gentleman  
464 that you ought to do both. But this bill is designed just  
465 for the backlog. I yield back.

466       Mr. Lungren. Mr. Chairman?

467       Chairman Conyers. Who seeks recognition?

468       Dan Lungren?

469       Mr. Lungren. Mr. Chairman, as part of the unholy  
470 triumvirate of Weiner, Nadler and Lungren reporting this, I  
471 would like to just rise to assure my colleagues on this side  
472 of the aisle that I haven't gone absolutely bonkers.

473       Occasionally, we can come together and support something  
474 like this. I think arguments for and against both have  
475 merit, but I would hope that on balance we would support this  
476 amendment for this reason.

477       The experience of DNA collection, DNA analysis, DNA  
478 application to criminal cases, both in terms of exoneration  
479 and in terms of identifying suspects, has been not a straight  
480 line. It has been a circuitous route.

481       And we have run into these problems all along where we  
482 would fund one side, not fund the other, where we would give  
483 money for part of the analysis and not the other.

484       And if you could just visualize the number of cold hits  
485 that are daily taking place, and the number of cases that

486 have been solved and continue to be solved, and the prospect  
487 of more being solved because we do have the collected data on  
488 the other side of the equation—that is, from those who are  
489 felons sitting in prison—I would hope that it would be self-  
490 evident that the balance should be in support of the  
491 amendment.

492 I understand what the chairman of the subcommittee is  
493 saying, his concern about this adding to the backlog. I  
494 don't think that that is necessarily true.

495 But my concern is this. If we have not identified a  
496 felon sitting in a prison who has committed prior crimes in  
497 our states or other states, two things could happen.

498 One is you do not give comfort to that victim of the  
499 prior crime that her crime or his crime has been solved.

500 And secondly, that individual sitting in that other  
501 incarcerated institution may be let out. We may not find  
502 that person. And that person may very well commit another  
503 crime again.

504 Recidivism is truly a serious problem, particularly with  
505 sexual assault perpetrators, and so I would just hope in this  
506 case that this is a modest prescription in relation to the  
507 overall problem.

508 And I hope we could get support for this. And by the  
509 way, the amendment does provide a 2-year window for states to  
510 take the necessary steps to comply with the collection

511 requirements of the amendment.

512 I thank the chairman for the time.

513 Chairman Conyers. Mr. Nadler?

514 Mr. Nadler. Thank you, Mr. Chairman. I will be very  
515 brief.

516 I simply want to say that while the overall point of  
517 this bill is to reauthorize the bill to reduce the backlog of  
518 rape kits, Mr. Weiner is completely correct in saying that  
519 rape kits are useless, and reducing the backlog doesn't make  
520 sense, if you have nothing to compare it to.

521 Forty-seven states are getting the data from convicted  
522 felons. Three are not. If they want these funds, they  
523 should do the same.

524 In terms of the amount of time and money it takes, it is  
525 minor, for the reasons stated by Mr. Weiner.

526 The amendment makes eminent sense and hope we will all  
527 vote for it. I yield back.

528 Chairman Conyers. I think the Weiner amendment has been  
529 thoroughly discussed.

530 All in favor of the Weiner amendment indicate by saying  
531 "aye." All opposed, say "no." The "ayes" have it and it is  
532 so ordered.

533 Mr. Schiff?

534 Mr. Schiff. Mr. Chairman, I have an amendment at the  
535 desk.

536 Chairman Conyers. The clerk will report the amendment.

537 Mr. Schiff. Schiff-02.

538 The Clerk. Amendment to the amendment in the nature of

539 a substitute to H.R. 5057 offered by Mr. Schiff of

540 California. After section three, add the following new

541 section—

542 [The amendment by Mr. Schiff follows:]

543 \*\*\*\*\* INSERT \*\*\*\*\*

544 Chairman Conyers. Without objection, the amendment is  
545 considered read, and the gentleman from California is  
546 recognized.

547 Mr. Schiff. Thank you, Mr. Chairman. Over the last  
548 several years, we have witnessed the power of DNA databases,  
549 particularly those that have broad collection regimes.

550 Today, 12 states collect samples from murder and sex  
551 crime arrestees, including my home state of California. Four  
552 of these states, including California, collect samples from  
553 all felony arrestees.

554 Virginia was the first state to expand its database to  
555 include arrestees. Since then, the state has seen a total of  
556 398 hits to their arrestee database, 74 of which were  
557 associated with sexual assault cases.

558 For the first 2 months of 2008, six hits to arrestees  
559 were made, the first hit coming after the upload of the first  
560 80 samples into the database.

561 A 2005 Chicago study examined the criminal activities of  
562 only eight individuals and found that 60 violent crimes could  
563 have been prevented, including 53 murders and rapes, if DNA  
564 was required for felony arrests.

565 In one example, Andre Crawford was charged with 11  
566 murders and one attempted murder aggravated sexual assault.  
567 If the state had required him to give a DNA sample during an  
568 earlier felony arrest, the subsequent 10 murders and one rape

569 would not have occurred.

570       In another example, Mario Villa was charged with four  
571 rapes, linked by DNA to two other rapes and a main suspect in  
572 an additional rape and two attempted rapes. If the state had  
573 required him to give a DNA sample during an earlier felony  
574 arrest, eight rapes or attempted rapes could have been  
575 prevented.

576       A recent Maryland study looked at the criminal histories  
577 for three offenders and found that 20 crimes, including  
578 rapes, sexual assaults and murder, could have been prevented  
579 had their DNA samples been required upon arrest.

580       States which collect arrestee samples, such as Virginia  
581 and California, are greatly increasing the power of the  
582 national DNA network, while states with far narrower  
583 collection regimes are making the federal database, which  
584 Congress has invested a substantial amount of money in, less  
585 efficient.

586       These states can still avail themselves of the federal  
587 database and take full advantage of the expansive collection  
588 regimes of other states.

589       My amendment differs a little bit from my colleague from  
590 New York, Mr. Weiner's amendment, in that it would not  
591 preclude Debbie Smith funds from going to states that don't  
592 collect samples for violent arrests, arrestees for violent  
593 crimes, but it would provide incentives for states to follow

594 the lead of the other 12 states that currently collect  
595 samples from individuals arrested or charged with murder or  
596 sex crimes.

597 Those states that enact such enhanced collection process  
598 under the amendment would be eligible for a 10 percent  
599 increase in the federal formula law enforcement funds.

600 So this would provide an incentive out of federal  
601 formula law enforcement funds for states to collect samples  
602 from those arrested for murder and other violent sex crimes,  
603 and I would urge the committee's support.

604 Mr. Weiner. Would the gentleman yield for a question?

605 Mr. Schiff. Yes.

606 Mr. Weiner. Can you walk us through how this would  
607 work? If someone gets arrested, a sample is taken, if they  
608 are exonerated or not charged, or in some way cleared, does  
609 the DNA still get uploaded in that case? Is that what the  
610 amendment envisions?

611 Mr. Schiff. Well, if someone is arrested for murder or  
612 rape in these states, they would be swabbed just like someone  
613 convicted. Their DNA would go into the system to see if a  
614 hit is made.

615 If subsequent to that there is an acquittal or  
616 exoneration, then it probably is dependent on each state to  
617 have an expungement of the sample from their database, and it  
618 might vary from state to state.

619 Mr. Weiner. Would the gentleman yield for one—is there  
620 a concern that you have—that law enforcement might use this—  
621 might be encouraged to do arrests that are not based on  
622 probable cause just for collecting a lot of DNA evidence,  
623 just to do a series of swabs of a neighborhood?

624 Mr. Schiff. Let me just amend what I mentioned earlier.  
625 Let's see here. Section 14132 of Title 42 provides that as a  
626 condition of access to the index, a state shall promptly  
627 expunge that index of the DNA analysis of a person in the  
628 index if the person has not been convicted of the offense  
629 that was the basis for collecting the sample.

630 Mr. Weiner. Yes, but what happens, Mr. Schiff, in the  
631 window of time between their arrest and the time that that  
632 conclusion is arrived at? What happens with their DNA? Can  
633 it be used?

634 Mr. Schiff. Well, that what I am saying, that when  
635 someone is arrested for murder or rape in the 11 states which  
636 provide—or the 12 states that currently collect samples from  
637 murder and sex crime arrestees, they would be swabbed.

638 Their DNA would be input into the system to see if there  
639 is a match. In many cases, there is a match. In some cases,  
640 there isn't.

641 If they are later exonerated or not convicted, then the  
642 sample is expunged from the system. But you do have the  
643 opportunity to run the sample upon arrest.

644 And you know, as the cases that I have cited mention,  
645 and many others, they have successfully removed murderers and  
646 rapists from the streets. In other cases where it has not  
647 been done, you might have prevented multiple murders or  
648 rapes.

649 And again, we are talking about not expanding it to what  
650 other states have done and requiring all arrestees, but  
651 rather murder and sex crime arrestees.

652 And again, we are not saying you lose your funds if you  
653 don't do it, but we are saying we are providing an incentive  
654 in federal law enforcement funds if you do.

655 Chairman Conyers. Would the gentleman yield?

656 Mr. Schiff. Yes.

657 Chairman Conyers. Do you have any approximation of the  
658 cost?

659 Mr. Schiff. Mr. Chairman, I don't, although I can say  
660 this in terms of the issue that was raised with respect to  
661 the prior amendment, the Weiner amendment. I did meet with  
662 DOJ recently to talk about the DNA offender backlog problem.

663 There really are two issues. There is the issue of the  
664 rape kits or the DNA collected from murder scenes for which  
665 there is, you know, a substantial backlog.

666 Then there is the offender samples, which, as Mr. Weiner  
667 pointed out, can be highly routinized in the sense of  
668 technology. These are uniform swabs that are taken.

669           The federal labs are expanding their capacity  
670 technologically and otherwise. They anticipate with the  
671 resources that we have provided—and we are trying to provide  
672 additional resources through the appropriation process—that  
673 they can deal with not only the backlog in terms of any  
674 offender samples, but also the anticipated increase in  
675 offender samples.

676           So the backlog program with respect to the individuals  
677 convicted or arrested is far easier to deal with and,  
678 according to DOJ, is being dealt with and will be dealt with  
679 in the next year.

680           This does not affect the casework sample problem which  
681 is more substantial. But it would allow us to take people  
682 off the street where we can make positive hits.

683           Chairman Conyers. The gentleman's time has expired.

684           Judge Gohmert?

685           Mr. Gohmert. Thank you, Mr. Chairman.

686           This does give financial incentives to states to collect  
687 DNA samples from all murder and rape arrestees. And I  
688 appreciate the help of my colleague in doing things that  
689 drives the ACLU crazy.

690           But it is just that this—and I could see this being an  
691 effective program. But I don't want to lose sight of the  
692 fact of what the Debbie Smith Act originally did, what the  
693 program does, what the reauthorization is trying to do—help

694 people who have been victims of violent crime, like Debbie  
695 was, to get those things processed.

696 And I am afraid we are going to keep adding work that is  
697 going to put those things to the back. And I would just hate  
698 to see that, although I would welcome—

699 Mr. Schiff. Would the gentleman yield?

700 Mr. Gohmert. Certainly, Mr. Schiff.

701 Mr. Schiff. I thank the gentleman. I just want to go  
702 back to one of the examples I gave, the example of Andre  
703 Crawford, charged with 11 murders and one attempted murder.

704 If the state had required him to give a swab when he was  
705 arrested, he would have been taken off the street. The  
706 subsequent 10 murders would have never taken place. That is  
707 10 people murdered that would be alive today.

708 Now, what effect would it have that we took his swab on  
709 the backlog of rape kits and murder kits and kits from other  
710 crime scenes? The answer is no effect.

711 Whatever degree there is a backlog in the kits, the  
712 backlog exists and we need to deal with it. Whether we take  
713 a swab from an arrestee or someone convicted is not going to  
714 affect the kit backlog.

715 And so we are talking about apples and oranges here. We  
716 can and should do much more under Debbie Smith and otherwise  
717 to deal with the kit backlog, but that shouldn't stop us from  
718 making sure there is someone to match that kit to.

719           And if we can prevent these murders and rapes from  
720 occurring—and there is really no tool out there—if there were  
721 another tool like this that had the same capacity—the amount  
722 we would have to spend in additional cops on the beat, in  
723 addition to detectives, et cetera, far exceeds—those costs  
724 would far exceed what we need to do to analyze a few more DNA  
725 swabs.

726           And I think if it means, in the case of this one  
727 individual, preventing 10 murders and additional rapes, it is  
728 worth doing.

729           Mr. Gohmert. Well, reclaiming my time, I understand  
730 what the gentleman was saying, but I would ask the gentleman  
731 and others making amendments not to lose sight of what the  
732 Debbie Smith Reauthorization Act of 2008 is supposed to do.

733           Mr. Schiff. Would you just yield one last point?

734           Mr. Gohmert. Yes.

735           Mr. Schiff. And I thank you for that, because this  
736 actually may have an impact in a positive direction that the  
737 gentleman has mentioned that hadn't occurred to me, and that  
738 is this.

739           Had this offender, Andrew Crawford—had he been swabbed  
740 when he was arrested for one of the initial murders, that  
741 would have been 10 less murders and rapes, which meant that  
742 there would be 10 less kits from those other 10 scenes that  
743 would be in the system.

744           So the impact actually would have been to reduce the  
745 backlog of the crime scene kits, because there would have  
746 been 10 less victims and therefore 10 less kits.

747           So in that sense, the offender swabs, which are much  
748 easier to do, take less time, can be done technologically and  
749 routinized, end up reducing the backlog of the crime scene  
750 kits. In that sense, I think it very much deals with the  
751 purpose of the backlog reduction.

752           And I thank the gentleman and yield back.

753           Mr. Gohmert. And reclaiming my time, there are a  
754 limited number of resources. But I do not want to lose sight  
755 of the good that the Debbie Smith program has done and will  
756 do.

757           I yield back my time. Thank you.

758           Chairman Conyers. Might I observe that this only takes  
759 place under these circumstances, the person has to be very 18  
760 years of age, and it has to deal with an offense of murder,  
761 manslaughter or attempt to commit murder or manslaughter.

762           Mr. Weiner. Mr. Chairman, I move to strike the last  
763 word.

764           Yes, I mean, I have to tell you that I am inclined to  
765 support the gentleman's amendment, but it does raise a  
766 troubling prospect.

767           Unlike when you take a fingerprint from someone who is  
768 arrested and run that, which is analogous here—that

769 information that is gathered when you are arrested. You give  
770 that. That is run also.

771       There is a concern here that what could happen is if  
772 Appleville, Ohio has a rape, police then could theoretically  
773 go out and start arresting people, theoretically for cause,  
774 taking DNA samples to try to break the case of the rape.

775       Mr. Nadler. Would the gentleman yield?

776       Mr. Weiner. Sure.

777       Mr. Nadler. If that happens, though, if the police—and  
778 I asked you to yield because I was going to bring up the  
779 question in a moment.

780       If the police were to arrest people improperly, without  
781 probable cause, and then got a DNA sample, whether that was  
782 the purpose of the arrest or not, but it was an improper  
783 arrest, and there was a hit on that—and let's assume that  
784 person was, in fact, guilty of some other crime, which this  
785 DNA showed.

786       Wouldn't that evidence be inadmissible as fruit of the  
787 poisonous tree and have to be thrown out?

788       Mr. Weiner. Well, let me just reclaim. I asked that  
789 question earlier. I asked that question earlier, and the  
790 answer is probably not.

791       If you take a fingerprint, and you are arrested, and you  
792 stole a car, and they run the print and they find that you  
793 are out on—that you have committed some crime or something

794 else, I believe you can use it.

795 But more importantly, I would just—

796 Mr. Nadler. I don't think you are right on that.

797 Mr. Weiner. Well, let me just make my point first, and—  
798 because I do want to hear the answer to your point.

799 The concern that I have here is that, you know, we see  
800 in New York City, for example—we have something called 250,  
801 stop and frisk. We have seen a meteoric rise in the number  
802 of stops and frisks. Obviously, those people—commit a crime.

803 Theoretically, they are all stopped for probable cause.  
804 It has been this tool of policing now to just—and you can  
805 argue that—if you put this, which is even more than just  
806 stopping and questioning someone and running their driver's  
807 license or something else, if you say this is a lock dead  
808 lock that we are going to catch the rapist with their DNA  
809 hits, you are creating a really, really strong incentive for  
810 police to go out and arrest a bunch of people who fit a  
811 general characteristic as a male of whatever size or height.

812 Mr. Schiff. Will the gentleman yield?

813 Mr. Weiner. And I think that we have to figure out some  
814 way to balance that. And I will be glad to yield to hear how  
815 you think that—

816 Mr. Schiff. Well, to get to your point and Mr.  
817 Nadler's, a couple of things. One is whatever incentive  
818 there is—and I, you know, frankly think that most law

819 enforcement try to do their jobs diligently and follow the  
820 law.

821       If law enforcement are going to arrest people simply to  
822 arrest them, or to—in the hope in some kind of a fishing  
823 expedition, they will do that for fingerprints—DNA.

824       Mr. Weiner. If I can just say, before you finish on  
825 that thought—but it is just a different—as you know, it is a  
826 different type of test. This is not just running someone to  
827 see if they got something else.

828       This is going around to—if you could theoretically swab  
829 every male in the country, they could catch that crime every  
830 time, right?

831       Mr. Schiff. Well, you know, I guess by that theory you  
832 would try to arrest and convict people of minor offenses to  
833 get their DNA. But I don't think that that is going to be  
834 the practice of law enforcement.

835       Moreover, if, as Mr. Nadler says, you arrest someone,  
836 you don't have probable cause, you do it for the purpose of  
837 getting a swab, I think it is much the same as if you make  
838 any other improper arrest.

839       If people make statements and they didn't get the  
840 Miranda warnings or whatnot—if law enforcement is not acting  
841 in good faith, it gets thrown out. So I think Mr. Nadler's  
842 analysis is correct.

843       If law enforcement maliciously arrests people without

844 probable cause to do a fishing expedition and swab everyone  
845 in town, that is going to get thrown out.

846 By the same token, when law enforcement arrests somebody  
847 for murder or arrests somebody for rape, and ultimately they  
848 go to trial and prove them guilty, or they are released on  
849 bail and during the period of pretrial we find another hit in  
850 another murder case, and we—

851 Mr. Weiner. If I can reclaim my time, Mr. Schiff, there  
852 is no doubt about it it will be effective. It is really not  
853 in dispute. If you test more people, you are going to have  
854 more hits.

855 The only question I have—and frankly, you know, I have  
856 been thinking about your amendment, and although I didn't  
857 know you would offer it, for some time about whether or not  
858 we should just—every time someone walks through the criminal  
859 justice system, we take their fingerprint, we take their  
860 swab.

861 What troubles me about this, though, is not whether it  
862 will be successful in getting hits. It is whether or not you  
863 are getting—you are putting too many—unless you have some  
864 kind of a check on the system, more than just saying probable  
865 cause, frankly—every one of the hundreds and hundreds of  
866 thousands of stops and frisks in New York all theoretically  
867 have probable cause.

868 Ninety-nine point nine nine percent of them—if I can

869 just finish.

870 Mr. Schiff. If the chairman will yield—

871 Mr. Weiner. If I can just finish.

872 Mr. Schiff. A stop and frisk is not an arrest. And we  
873 are not talking about pulling someone over on—suspicions and  
874 getting their DNA.

875 Mr. Weiner. No, no, no. You are misunderstanding my  
876 point. It is the incentive to get people in some forum or  
877 not into the criminal justice system context.

878 And you are making an enormous incentive in the case of  
879 someone investigating a rape in a town to say, "Get this  
880 person into the system," because now the Schiff amendment  
881 says we can swab them the moment they walk—that is the  
882 concern.

883 Mr. Schiff. If the gentleman will yield again, I am not  
884 aware of any indication in the 12 states that do this much  
885 more broadly than this amendment that we are seeing people  
886 simply arrested for the purpose of swabbing them.

887 I don't think that is likely to happen. What I do think  
888 will happen is that outside of those 12 states that are  
889 already doing this, if we can incentivize states when they  
890 arrest someone for murder or they arrest someone for a  
891 violent crime, attempted murder or rape, to see whether there  
892 is evidence linking them to other murders, we are going to  
893 prevent murder.

894 In these cases I have cited, there would be 10 people  
895 walking the streets now, and I think we need to be concerned  
896 about not only their privacy rights but their rights to go  
897 about their lives unmolested and unvictimized.

898 This would give us the power to do that, and-

899 Chairman Conyers. The gentleman's time has expired.

900 The chair notes the Weiner concern, because we have been  
901 called up to New York about excessive police activity  
902 constantly this year, and that is a problem that disturbs him  
903 and myself as well.

904 The chair recognizes Debbie Wasserman Schultz, and then  
905 Jerry Nadler, and then Mr. Sherman.

906 Ms. Wasserman Schultz. Thank you, Mr. Chairman.

907 Striking the last word on the Schiff amendment, I have to  
908 agree with Mr. Schiff and suggest that you can't analogize  
909 that the police, if provided with an incentive to--an extra  
910 financial incentive to ensure that they take the DNA swabs of  
911 people who are arrested and charged with murder or sex crimes  
912 are the same as police officers who set up speed traps and  
913 try to, you know, generate more revenue for their  
914 municipality.

915 I mean, we are not talking about speeding tickets here.  
916 We are talking about individuals who are charged with murder  
917 and sex crimes.

918 And I just can't imagine that you would have police

919 officers randomly and increasingly arresting more and more  
920 people indiscriminately for murder and sex crimes simply to  
921 get a 10 percent bonus.

922 Mr. Weiner. Would the gentlelady yield?

923 Ms. Wasserman Schultz. I would be happy to yield.

924 Mr. Weiner. I think you misunderstood. It is not a  
925 financial thing I am saying. I am saying think of the  
926 hypothetical that will really happen. There is a rape in a  
927 neighborhood. The cops say, "Okay, we have a surefire way to  
928 crack this case. If we have DNA of every single male human  
929 who is in that neighborhood, we are going to crack the case."

930 Well, now they say, "Well, I have got reasonable cause  
931 to arrest more people. Now they are going to have this DNA  
932 test." It is not the money. We are going to have the  
933 ability to do the test.

934 It is going to lead to, I think, lazy policing, where  
935 they are going to go and say, "Let's just round up more  
936 people and arrest them." That is my concern.

937 Ms. Wasserman Schultz. Reclaiming my time, I understand  
938 your concern. Basically, there isn't really anything to stop  
939 them from doing that now.

940 Mr. Weiner. [OFF MIKE]

941 Ms. Wasserman Schultz. No, I understand. But they  
942 could. The DNA testing is not unavailable.

943 Mr. Weiner. [OFF MIKE]

944 Ms. Wasserman Schultz. Well, reclaiming my time, we  
945 have to make sure that we get more information, not less. We  
946 have criminals walking the streets.

947 The best example that was used was Mr. Schiff's. There  
948 are 10 people who were murdered that would not have been  
949 murdered if the police had the ability to do this.

950 And I mean, there is—particularly when it comes—I think  
951 the flip side is true, because we also have to be thinking  
952 about the people who would be proven innocent and who would  
953 not be pursued for crimes that they are suspected of if we  
954 have more DNA evidence available.

955 So I support the Schiff amendment, and I think  
956 particularly when it comes to serious crimes like murder and  
957 sex crimes, we need to make sure—

958 Mr. Lungren. Would the gentlelady yield?

959 Ms. Wasserman Schultz. I would be happy to yield to  
960 you, Mr. Lungren.

961 Mr. Lungren. The point that Mr. Nadler made I think  
962 still needs to be put into the context of what you just said.

963 This is an ability to gather more information, but it  
964 cannot be done illegally. If someone is arrested for murder  
965 or one of the offenses contained in the Schiff amendment  
966 without probable cause, anything that comes from that arrest  
967 is fruit of the poisoned tree.

968 Ms. Wasserman Schultz. And, reclaiming my time, Mr.

969 Lungren, I just don't believe that we will have people  
970 indiscriminately arrested without probable cause.

971 Mr. Lungren. I agree with you, and that is the  
972 protection against those who fear that this amendment might  
973 be utilized in improper ways.

974 Ms. Wasserman Schultz. Thank you for illuminating my  
975 point. I appreciate it.

976 I yield back the balance of my time.

977 Mr. Weiner. Before the gentlelady yields back, I have  
978 gotten two different answers to this question, and it is a  
979 good one.

980 Mr. Schiff. Will the gentleman yield?

981 Ms. Wasserman Schultz. I yield back my time.

982 Mr. Schiff. I am sorry, the gentlewoman.

983 When I said that someone arrested or charged with  
984 murder—that their sample can be swabbed and run in the  
985 system, that is true.

986 But what Mr. Lungren is also saying is true, and that is  
987 if someone is arrested without probable cause for the  
988 malicious purpose of just swabbing them, and you run the  
989 match, and it is a hit, that hit gets thrown out. That  
990 evidence gets thrown out, because it is fruit of the  
991 poisonous tree.

992 If you, you know, make an illegal arrest, and you make  
993 that arrest in bad faith, that evidence can't be used, so—

994 Mr. Weiner. Would whoever has the time—I just want to  
995 understand this, and I am not a lawyer. I am not a  
996 prosecutor.

997 Ms. Wasserman Schultz. I would be happy to yield to—

998 Mr. Weiner. Thank you. I am not a lawyer. I am not a  
999 prosecutor. But walk me through this. Someone is arrested,  
1000 and the level of test for an arrest is what, probable cause  
1001 to believe they committed a crime?

1002 Mr. Schiff. Right.

1003 Mr. Weiner. So someone is arrested, very low threshold.  
1004 All right, wrong guy, he didn't do it. But we have their  
1005 DNA. Wrong guy, he didn't do it, but we have their DNA. Can  
1006 you use that DNA to link this guy to another crime if you say  
1007 he didn't do it, wrong guy?

1008 Mr. Schiff. If the gentlewoman will yield, that is not  
1009 the—

1010 Ms. Wasserman Schultz. I would be happy to yield.

1011 Mr. Schiff. —hypothetical that you just gave, which is—

1012 Mr. Weiner. Okay, but—

1013 Mr. Schiff. No, let me just finish. The gentlewoman is  
1014 yielding. If you arrest everyone in the little town of  
1015 Podunk because you want to swab everyone, you didn't have  
1016 probable cause to arrest everyone in the town of Podunk.

1017 If you do get a match, that match gets thrown out.

1018 Mr. Weiner. Okay.

1019 Mr. Schiff. That is the point. Now, if you say you do  
1020 have probable cause that someone committed murder and you  
1021 arrest them, and you run a test—

1022 Chairman Conyers. The time of the gentlelady has  
1023 expired.

1024 Mr. Weiner, could you restrain yourself for a little bit  
1025 so we can get through here? We have got about four more  
1026 bills to deal with.

1027 Does Mr. Nadler seek recognition again?

1028 Mr. Nadler. I do. I have not previously been  
1029 recognized on this.

1030 Chairman Conyers. The gentleman is recognized.

1031 Mr. Nadler. Thank you.

1032 Mr. Chairman, I confess that when I came to this meeting  
1033 I was planning on voting against this amendment. But on  
1034 thinking about it and listening to the arguments, I have  
1035 changed my mind, and for the following reason.

1036 You start off with obviously society is better off if  
1037 you have all the evidence properly obtained. And you look at  
1038 the DNA analogous—initially analogous to a fingerprint. We  
1039 fingerprint everybody that is arrested.

1040 But then you say, "Wait a minute." You can't  
1041 necessarily do that because DNA is more dangerous than a  
1042 fingerprint. It is not usable simply for identification. If  
1043 it were usable simply for identification like a fingerprint,

1044 there would be no reason not to have the same law.

1045       It is more dangerous. It could give you all sorts of  
1046 other information about health, about all kinds of things.  
1047 So we have to treat it more carefully. Fine.

1048       But then the question is if, in fact, you take DNA from  
1049 someone who is arrested solely for the purpose of  
1050 identification, which would be the case with a fingerprint,  
1051 and if, in fact, it is going to be expunged if the person is  
1052 not convicted of the crime, then it cannot then be misused  
1053 for any other purpose. So on that basis, it becomes  
1054 analogous to the fingerprint again.

1055       Then the issue is raised, "Wait a minute. What if the  
1056 arrest was improper?" What if the arrest was improper? So  
1057 you now have this identifying information because of an  
1058 improper arrest, and the answer to that is, as Mr. Lungren  
1059 pointed out, and as was answered by Mr. Schiff to my question  
1060 previously, the fruit of the poison tree doctrine.

1061       If, in fact, the arrest was improper, then the DNA swab  
1062 was improper and you cannot use that for identification or  
1063 any other evidentiary purpose. It is gone.

1064       Mr. Weiner. Will the gentleman yield?

1065       Mr. Nadler. Then the question that Mr.—I will yield in  
1066 just a minute.

1067       Mr. Weiner. Would you yield to me for a moment?

1068       Mr. Nadler. In a minute. In a minute.

1069 But then the question that Mr. Weiner raised is, "Yes,  
1070 maybe. Maybe you don't have to worry about that because of  
1071 expungement, but might there not be an incentive to arrest  
1072 people improperly to get the DNA?"

1073 And in fact points out accurately that we have had a lot  
1074 of invalid stop and frisks in New York, and that we should  
1075 crack down on this because it is improper and so forth, and  
1076 we should. But a stop and frisk is not an arrest. You don't  
1077 need probable cause.

1078 And if, in fact, the police were improperly stopping  
1079 people to get DNA, it would be purposeless because they would  
1080 not be able to use the DNA for identification or any other  
1081 purpose, and therefore there is no incentive.

1082 So when you go through this logic, you come back to the  
1083 fact that if DNA is used only for identification purposes as  
1084 a fingerprint, then there is no reason that you shouldn't  
1085 treat it legally as a fingerprint in terms of allowing it or  
1086 requiring that it be taken from arrestees, as long as it is  
1087 expunged and not used for any other purpose, and as long as  
1088 the exclusionary rule is still there, and the Supreme Court  
1089 hasn't eliminated that.

1090 And it is not a question of good faith, by the way. The  
1091 exclusionary rule is not subject to good faith. It is simply  
1092 subject to legal action. So as long as the arrest is legal,  
1093 there is no reason not to use the—to require that the DNA be

1094 taken for identification purposes only.

1095       If the person turns out to be innocent or not to be  
1096 prosecuted, you expunge it. And if the arrest was illegal,  
1097 you can't use it in the first place.

1098       So I see no problem with the amendment, and I support  
1099 it.

1100       And now I yield.

1101       Mr. Weiner. The gentleman's description was wrong. It  
1102 is not expunged if the guy is arrested and then released. It  
1103 is not. It is used. The gentleman, Mr. Schiff, said it is  
1104 used and tested.

1105       If he is arrested and then released, the evidence is  
1106 still used to match—it is not an issue of expungement.

1107       Mr. Nadler. Wait, wait, wait, wait. Reclaiming my  
1108 time, Mr. Weiner, let me—reclaiming my time, if the—

1109       Chairman Conyers. Mr. Weiner.

1110       Mr. Nadler. If the person is—what did you say?—  
1111 released, not charged, I thought—and let's assume that a hit  
1112 was made. But you can't use that hit.

1113       Mr. Weiner. They are wrong.

1114       Mr. Nadler. If it was an illegal arrest, you can't use  
1115 that hit.

1116       Mr. Weiner. Legal arrest. Can the gentleman yield for  
1117 a moment?

1118       Mr. Nadler. Okay, I will yield in a second.

1119 If it was a proper arrest, if it was a proper arrest,  
1120 and the—hold on. If it was a proper arrest—no, no, no, no.

1121 Mr. Weiner. It is not a proper question.

1122 Mr. Nadler. If it was a proper arrest, if it was a  
1123 proper arrest, a legal arrest, and you took the DNA, and a  
1124 hit was made, why is there anything wrong with using that,  
1125 any more than there would be with using a—why is there  
1126 anything wrong with using it for—

1127 Chairman Conyers. The gentleman's time has expired.

1128 Mr. Nadler. —identification purposes, any more than  
1129 there would be with using a—I ask for 1 additional minute.

1130 Chairman Conyers. All right.

1131 Mr. Nadler. Thank you.

1132 And then I will yield to Mr. Weiner as soon as I finish  
1133 asking the question. But why is it any more wrong to use  
1134 that solely for identification purposes, which that hit  
1135 indicates, than it would be to use a fingerprint similarly?

1136 Mr. Weiner. Well, Mr. Nadler, I came here inclined to  
1137 vote in favor, and I just want to—I want also to be mindful  
1138 of the idea hundreds and hundreds of thousands of people are  
1139 stopped on reasonable suspicion.

1140 Now, when those people are stopped and they go on their  
1141 way, there is no prosecution to find out what—I fear that  
1142 what you are doing is—

1143 Chairman Conyers. Okay.

1144 Mr. Weiner. -making that low test, probable cause-very  
1145 low test-and saying you are going to have hundreds-

1146 Mr. Nadler. Reclaiming my time, I will simply observe  
1147 that if the only fear of use of a proper identification  
1148 procedure that can yield a lot of hits and save lives and  
1149 solve crimes is that it might give an improper incentive to  
1150 police to arrest people without probable cause, I think we  
1151 can handle that in other ways, and it is not an argument  
1152 against the amendment.

1153 Chairman Conyers. The chair is going to-

1154 Mr. Gohmert. Mr. Chairman?

1155 Chairman Conyers. -suspend-just a moment, everyone.

1156 We are going to lose our quorum, and we have got five  
1157 bills that have been held over that we are bringing. And so  
1158 without objection, the chair is going to bring this matter-

1159 Mr. Gohmert. I might object. I was going to ask  
1160 unanimous consent to allow the majority to keep fussing among  
1161 themselves.

1162 [Laughter.]

1163 Chairman Conyers. I would love to acknowledge that  
1164 objection.

1165 But we have got to move along. Let's have a vote on the  
1166 Schiff amendment.

1167 Mr. Watt. Mr. Chairman?

1168 Chairman Conyers. Yes, sir.

1169 Mel Watt hasn't said a word today.

1170 Mr. Watt. And I will move to strike the last word, but

1171 I won't take 5 minutes, I assure you.

1172 Chairman Conyers. All right.

1173 Mr. Watt. I think that this raises an issue that those

1174 of us who have lived in different worlds react to

1175 differently.

1176 I honestly think it would be a terrible idea to do this.

1177 And it is based on my experience with police officers who do

1178 exactly what has been pointed out as a fear here. I have

1179 seen it happen.

1180 And we don't need to be incentivizing police officers to

1181 do anything that is improper. And I think this would have

1182 the adverse effect, and I vigorously oppose it, and I would

1183 be remiss if I did not say that.

1184 I am happy to yield.

1185 Mr. Scott. Mr. Chairman, I would oppose the amendment

1186 for a different—for the same reason we opposed the last one.

1187 That is, it is untimely. It will add to the backlog.

1188 I like the idea of the—Virginia has been very successful

1189 in using the arrestee data, but the suggestion that 10 people

1190 would not have been murdered would also apply to the fact

1191 that we wouldn't have done as much with the backlog.

1192 At least this amendment, unlike the last amendment, pays

1193 for itself without applying an unfunded mandate, by providing

1194 an incentive with such sums—with a separate funding source,  
1195 so it is actually better than the last one.

1196         But I would hope that we would not pass this amendment,  
1197 actually go through in more detail the concerns of the  
1198 gentleman from North Carolina about the legality of some of  
1199 this stuff and whether or not it would be wrongfully  
1200 incentivizing bad police practices.

1201         So I would hope that we would not agree to it at this  
1202 time, and hopefully we could bring it up with the Innocence  
1203 Protection Act provisions which we will be considering—

1204         Chairman Conyers. Mr. Watt, would you yield to Brad  
1205 Sherman and Steve Cohen so we can come to a vote?

1206         Mr. Watt. I am happy to yield to whoever wants me to  
1207 yield.

1208         Mr. Sherman. I thank the gentleman for yielding. Bio-  
1209 identification information databases are hardly new. They  
1210 provide a benefit to law enforcement. They provide privacy  
1211 concerns. We have them now. They are fingerprints.

1212         And I would think that we would have the same goals for  
1213 fingerprints and for DNA information and, one might even  
1214 argue, for mug shots. When there is a lawful arrest, the  
1215 police take a mug shot. It is my understanding they can use  
1216 that in the future, even if you are cleared of the crime for  
1217 which you are arrested.

1218         It is my understanding that if you are rightfully

1219 arrested, they take your fingerprints. They keep those  
1220 fingerprints even if you are cleared or at least never  
1221 charged with the crime for which you are arrested.

1222 And I would think we would apply the same rule to DNA.  
1223 The issue will then be what about the unlawful arrests that  
1224 generate bio-information, whether it is the old-fashioned  
1225 fingerprint or mug shot or whether it is DNA.

1226 And I think it has been pointed out if the arrest is  
1227 unlawful, then everything that follows is the fruit of the  
1228 poisonous tree. I yield back to the gentleman.

1229 Mr. Watt. I yield to Mr. Cohen.

1230 Mr. Cohen. Thank you, sir.

1231 Would the sponsor of the amendment yield? I believe I  
1232 understand your intent, and it is to get folks who have been  
1233 charged with serious crimes—and in subsection two, an element  
1234 involving a sexual act or sexual contact with another—it is  
1235 not your intent, I would imagine, to include misdemeanors  
1236 that involve sexual acts such as prostitution or maybe an  
1237 adult club act that would be a misdemeanor but would be a  
1238 sexual act.

1239 It wouldn't be your intent to include that, but is it  
1240 not included in that language?

1241 Mr. Watt. I will yield to Mr. Schiff.

1242 Mr. Schiff. I thank the gentleman for yielding.

1243 I don't believe that is included. I will double check.

1244 But it is defined as a sexual act or sexual contact that is a  
1245 specified offense against a minor as defined in Section 1117  
1246 of the Sex Offender Registration Notification Act, which  
1247 includes an offense involving kidnaping, false imprisonment,  
1248 solicitation to engage in sexual conduct—well, let's see—use  
1249 in sexual performance, solicitation to practice prostitution.

1250       If prostitution is included, I would be happy to  
1251 entertain a secondary amendment to exclude that.

1252       Mr. Cohen. Well, my concern is not so much with minors,  
1253 but in reading it, it says an element involving a sexual act  
1254 or sexual contact, comma, and the others that are specified,  
1255 so all that goes with the minors.

1256       Is it all only related to the acts with a minor or is it  
1257 simply any act involving a sexual act?

1258       Mr. Watt. Can I reclaim my time just to make the point  
1259 that the very issues that are being raised here are  
1260 justification and illustrate the importance of public policy  
1261 arguments that need to be evaluated before we hastily put  
1262 this amendment into this bill?

1263       Chairman Conyers. I thank the gentleman.

1264       Mr. Watt. So with that, I will yield back the balance  
1265 of my time.

1266       Chairman Conyers. Time is expired. All time has  
1267 expired.

1268       All those in favor of the Schiff amendment, indicate by

1269 saying "aye." All those opposed, say "no." "Nos" have it.

1270 Roll call vote is requested.

1271 The Clerk. Mr. Conyers?

1272 Chairman Conyers. No.

1273 The Clerk. Mr. Conyers votes no.

1274 Mr. Berman?

1275 [No response.]

1276 Mr. Boucher?

1277 [No response.]

1278 Mr. Nadler?

1279 [No response.]

1280 Mr. Scott?

1281 Mr. Scott. No.

1282 The Clerk. Mr. Scott votes no.

1283 Mr. Watt?

1284 Mr. Watt. No.

1285 The Clerk. Mr. Watt votes no.

1286 Ms. Lofgren?

1287 Ms. Lofgren. Aye.

1288 The Clerk. Ms. Lofgren votes aye.

1289 Ms. Jackson Lee?

1290 Ms. Jackson Lee. No.

1291 The Clerk. Ms. Jackson Lee votes no.

1292 Ms. Waters?

1293 [No response.]

1294 Mr. Delahunt?  
1295 [No response.]  
1296 Mr. Wexler?  
1297 [No response.]  
1298 Ms. Sanchez?  
1299 [No response.]  
1300 Mr. Cohen?  
1301 Mr. Cohen. No.  
1302 The Clerk. Mr. Cohen votes no.  
1303 Mr. Johnson?  
1304 Mr. Johnson. No.  
1305 The Clerk. Mr. Johnson votes no.  
1306 Ms. Sutton?  
1307 Ms. Sutton. No.  
1308 The Clerk. Ms. Sutton votes no.  
1309 Mr. Gutierrez?  
1310 [No response.]  
1311 Mr. Sherman?  
1312 Mr. Sherman. Aye.  
1313 The Clerk. Mr. Sherman votes aye.  
1314 Ms. Baldwin?  
1315 [No response.]  
1316 Mr. Weiner?  
1317 Mr. Weiner. Pass.  
1318 The Clerk. Mr. Weiner passes.

1319 Mr. Schiff?  
1320 Mr. Schiff. Aye.  
1321 The Clerk. Mr. Schiff votes aye.  
1322 Mr. Davis:  
1323 [No response.]  
1324 Ms. Wasserman Schultz?  
1325 Ms. Wasserman Schultz. Aye.  
1326 The Clerk. Ms. Wasserman Schultz votes aye.  
1327 Mr. Ellison?  
1328 Mr. Ellison. No.  
1329 The Clerk. Mr. Ellison votes no.  
1330 Mr. Smith?  
1331 Mr. Smith. Aye.  
1332 The Clerk. Mr. Smith votes aye.  
1333 Mr. Sensenbrenner?  
1334 Mr. Sensenbrenner. Aye.  
1335 The Clerk. Mr. Sensenbrenner votes aye.  
1336 Mr. Coble?  
1337 Mr. Coble. No.  
1338 The Clerk. Mr. Coble votes no.  
1339 Mr. Gallegly?  
1340 Mr. Gallegly. Aye.  
1341 The Clerk. Mr. Gallegly votes aye.  
1342 Mr. Goodlatte?  
1343 Mr. Goodlatte. No.

1344 The Clerk. Mr. Goodlatte votes no.  
1345 Mr. Chabot?  
1346 Mr. Chabot. Aye.  
1347 The Clerk. Mr. Chabot votes aye.  
1348 Mr. Lungren?  
1349 Mr. Lungren. Aye.  
1350 The Clerk. Mr. Lungren votes aye.  
1351 Mr. Cannon?  
1352 Mr. Cannon. Aye.  
1353 The Clerk. Mr. Cannon votes aye.  
1354 Mr. Keller?  
1355 Mr. Keller. Aye.  
1356 The Clerk. Mr. Keller votes aye.  
1357 Mr. Issa?  
1358 Mr. Issa. Aye.  
1359 The Clerk. Mr. Issa votes aye.  
1360 Mr. Pence?  
1361 Mr. Pence. Aye.  
1362 The Clerk. Mr. Pence votes aye.  
1363 Mr. Forbes?  
1364 Mr. Forbes. Aye.  
1365 The Clerk. Mr. Forbes votes aye.  
1366 Mr. King?  
1367 Mr. King. Aye.  
1368 The Clerk. Mr. King votes aye.

1369 Mr. Feeney?

1370 [No response.]

1371 Mr. Franks?

1372 [No response.]

1373 Mr. Gohmert?

1374 Mr. Gohmert. Aye.

1375 The Clerk. Mr. Gohmert votes aye.

1376 Mr. Jordan?

1377 Mr. Jordan. Aye.

1378 The Clerk. Mr. Jordan votes aye.

1379 Chairman Conyers. Ms. Waters?

1380 Ms. Waters. No.

1381 The Clerk. Ms. Waters votes no.

1382 Chairman Conyers. Any others?

1383 Mr. Weiner?

1384 Mr. Weiner. Aye.

1385 The Clerk. Mr. Weiner votes aye.

1386 Chairman Conyers. The clerk will report.

1387 The Clerk. Mr. Chairman—

1388 Chairman Conyers. All right, wait a minute.

1389 Berman?

1390 Mr. Berman. Aye.

1391 The Clerk. Mr. Berman votes aye.

1392 Chairman Conyers. Ms. Sanchez?

1393 Ms. Sanchez. No.

1394 The Clerk. Ms. Sanchez votes no.

1395 Chairman Conyers. The clerk will report.

1396 The Clerk. Mr. Chairman, 19 members voted aye. Twelve  
1397 members voted nay.

1398 Chairman Conyers. The amendment is agreed to.

1399 Without objection, we will now move to H.R. 2352, the  
1400 School Safety Enhancement Act, and I call it up pursuant to  
1401 notice for purposes of markup.

1402 At our last markup, we postponed further consideration  
1403 due to lack of a reporting quorum. Before we proceed with  
1404 the vote to report, are there any other amendments?

1405 Hearing none, a reporting quorum being present on H.R.  
1406 2352, the question is on reporting the bill as amended  
1407 favorably to the House. Those in favor, say "aye." Those  
1408 opposed, say "no." The "ayes" have it. The bill as amended  
1409 is ordered reported favorably.

1410 Without objection, the bill will be reported as a single  
1411 amendment in the nature of a substitute incorporating  
1412 amendments adopted, and staff is authorized to make technical  
1413 and conforming changes. Members will have 2 days for  
1414 additional views.

1415 Pursuant to notice, I call up H.R. 1783, the Elder  
1416 Justice Act. And at our last markup, we postponed further  
1417 consideration due to lack of a reporting quorum. Before we  
1418 proceed with the vote to report, are there any other

1419 amendments? Any kind of amendments?

1420 Mr. Cohen. Mr. Chairman, does the manager's amendment  
1421 include the amendment offered by Mr. Yarmuth concerning some  
1422 pilot programs for emergency crisis response teams?

1423 Chairman Conyers. No.

1424 Mr. Cohen. Could I move that the chair consider  
1425 including such in the manager's amendment and that it be  
1426 concurred in by the committee?

1427 Chairman Conyers. We have agreed to take that up when  
1428 it comes to the floor.

1429 Mr. Cohen. Thank you, sir.

1430 Chairman Conyers. A reporting quorum being present, the  
1431 question on reporting H.R. 1783 as amended favorably to the  
1432 House is now up for consideration. Those in favor, say  
1433 "aye." Opposed, say "no." "Ayes" have it, and the bill as  
1434 amended is ordered reported favorably.

1435 Without objection, the bill will be reported as a single  
1436 amendment in the nature of a substitute incorporating  
1437 amendments adopted. Staff is authorized to make technical  
1438 and conforming changes. Members have 2 days for additional  
1439 views.

1440 Pursuant to notice, I call up H.R. 5352, Elder Abuse  
1441 Victims Act, for the purposes of markup. At our last markup,  
1442 we postponed further consideration due to the lack of a  
1443 reporting quorum.

1444 Before we proceed with the vote to report, I ask the  
1445 members are there any other amendments.

1446 If none, then a reporting quorum being present, the  
1447 question is on reporting the bill as amended favorably to the  
1448 House. Those in favor, say "aye." Those opposed, say "no."  
1449 "Ayes" have it, and the bill as amended is ordered reported  
1450 favorably.

1451 Without objection, it will be reported as a single  
1452 amendment in the nature of a substitute incorporating  
1453 amendments adopted. Staff is authorized to make technical  
1454 and conforming changes. Members have 2 days for additional  
1455 views.

1456 Now we go back to the Debbie Smith Reauthorization Act—  
1457 Ms. Jackson Lee. Mr. Chairman?

1458 Chairman Conyers. —H.R. 5057. Are there other  
1459 amendments?

1460 Ms. Jackson Lee. Mr. Chairman?

1461 Chairman Conyers. The chair recognizes the gentlelady  
1462 from Texas.

1463 Ms. Jackson Lee. Thank you, Mr. Chairman. I have an  
1464 amendment at the desk.

1465 Chairman Conyers. The clerk will report the amendment.

1466 The Clerk. Amendment to the amendment in the nature of  
1467 a substitute to H.R. 5057 offered by Ms. Jackson Lee of  
1468 Texas. After section three of the amendment, insert the

1469 following new section—

1470 [The amendment by Ms. Jackson Lee follows:]

1471 \*\*\*\*\* INSERT \*\*\*\*\*

1472 Chairman Conyers. Without objection, the amendment will  
1473 be considered as read, and the gentlelady will be recognized  
1474 in support of her amendment.

1475 Ms. Jackson Lee. I thank you very much, Mr. Chairman.

1476 As I begin, let me thank the staff and chairman of the  
1477 Subcommittee on Crime as well as the minority staff for  
1478 working with my staff on this legislation.

1479 I think it is direct and pointed, and my amendment would  
1480 require the attorney general to evaluate the integrity and  
1481 security of DNA collection and storage practices and  
1482 procedures at a sample of crime laboratories throughout the  
1483 country to determine the extent to which DNA samples are  
1484 tampered with or otherwise contaminated in such laboratories.

1485 The samples should be a representative sample. My  
1486 amendment would require the attorney general to conduct this  
1487 evaluation annually. The attorney general should be required  
1488 to submit the evaluation to Congress.

1489 The amendment is necessary because you found that the  
1490 underlying premises of inadequate DNA labs across the country  
1491 have generated, if you will, inappropriate conviction of  
1492 innocent persons.

1493 The Innocence Project has been a leader on the issue of  
1494 the integrity of DNA labs, as we have passed legislation in  
1495 the past. This is an amendment that will make this  
1496 legislation more effective and efficient.

1497 And I am hoping and offering this amendment in response  
1498 to the National District Attorneys Association that has  
1499 written an article speaking about the problems of DNA labs in  
1500 particular in-

1501 Chairman Conyers. Would the gentlelady yield?

1502 Ms. Jackson Lee. I would be happy to yield.

1503 Chairman Conyers. I want you to know that Mr. Smith and  
1504 I have all agreed to your study, and we think it is an  
1505 excellent one.

1506 Ms. Jackson Lee. With that, I will yield back and thank  
1507 you graciously and ask my colleagues to support the  
1508 amendment. I don't know if I need to yield to the  
1509 distinguished chairman or if he is getting his own time.

1510 Mr. Scott. Mr. Chairman, very briefly, the last  
1511 amendment showed there may be some serious civil liberties  
1512 issues involved in the use of this data, and that would, I  
1513 hope, be part of the evaluation.

1514 The chain of custody for conviction should not be an  
1515 issue. In Virginia, if there is a cold hit, you don't use  
1516 the information in the database as the identifying factor.

1517 You would require a new DNA test that is compared to the  
1518 evidence so that the chain of custody-whatever happened  
1519 after-when they were in prison 10 years ago, whatever  
1520 happened to that evidence is not an issue.

1521 The new sample would be the one used in court. So the

1522 chain of evidence in a criminal prosecution should not be an  
1523 issue.

1524       But the civil liberties and what you do with all these  
1525 DNA samples I think is a critical issue.

1526       Ms. Jackson Lee. And would the gentleman yield? If the  
1527 gentleman would yield, let me affirm absolutely that one of  
1528 the premises is the integrity of the DNA and the chain of  
1529 custody but also the civil liberties question.

1530       And in light of that, I would ask unanimous consent to  
1531 include into the record an article by the Houston Chronicle  
1532 that refers to issues dealing with the mishandling or  
1533 falsification of DNA and other evidence.

1534       Chairman Conyers. Without objection, so ordered.

1535       [The information follows:]

1536 \*\*\*\*\* INSERT \*\*\*\*\*

1537 Ms. Jackson Lee. And an article or a report by the  
1538 National District Attorneys Association that speaks to this  
1539 issue across the nation.

1540 Chairman Conyers. Without objection, so ordered.

1541 [The information follows:]

1542 \*\*\*\*\* INSERT \*\*\*\*\*

1543 Ms. Jackson Lee. November 3rd, 2004. Thank you.

1544 Chairman Conyers. I thank you.

1545 Ms. Jackson Lee. I yield back.

1546 Chairman Conyers. All in favor of the amendment of the

1547 gentlelady from Texas, say "aye." All opposed, say "no."

1548 The "ayes" have it.

1549 Ms. Jackson Lee. Thank you.

1550 Chairman Conyers. And the chair recognizes the

1551 gentleman from Tennessee.

1552 Mr. Cohen. Thank you, Mr. Chairman. One thing that

1553 came to mind during the discussion on this bill—and I think

1554 it is a good bill—when I was in the Tennessee senate, I

1555 passed a bill on DNA and on exoneration of defendants using

1556 DNA material. It both exonerates the innocent and convicts

1557 the guilty.

1558 But we passed, which I think is necessary, a

1559 compensation act that requires that our state have a system—

1560 and we do have a system—of compensation for people who have

1561 been wrongfully incarcerated and freed because of DNA

1562 evidence.

1563 We worked with the Innocence Project, Peter Neufeld and

1564 Barry Scheck in New York. I would think every state that

1565 uses DNA both to convict the guilty and exonerate the

1566 innocent should have a process, a system, a statutory scheme

1567 that compensates people who have been wrongfully incarcerated

1568 and freed because of DNA evidence which is inclusive.

1569 I would ask the chairman if there is a way we could  
1570 offer an amendment to require states that receive these  
1571 funds—that they have such a system in place, a statutory  
1572 scheme or process, allowing wrongfully incarcerated  
1573 individuals the opportunity to get compensation for the time  
1574 they have been wrongfully incarcerated, and if that would be  
1575 appropriate to offer as an amendment or something that could  
1576 be in a manager's amendment.

1577 Chairman Conyers. It could be, Steve Cohen. Under  
1578 suspension, we could be able to add that.

1579 Mr. Cohen. Well, I would like to ask the committee,  
1580 then, to concur in the idea that this should be part of it,  
1581 because if someone has been wrongfully incarcerated—we had a  
1582 gentleman in Tennessee named Art McMillan. He spent 20 years  
1583 in jail for a rape he did not commit.

1584 Chairman Conyers. Well, we will be happy to work with  
1585 you on that procedural possibility.

1586 Mr. Cohen. Thank you.

1587 Chairman Conyers. I support the concept.

1588 Mr. Cohen. Thank you.

1589 Chairman Conyers. The vote now occurs on H.R. 5057.

1590 The question is on the—

1591 Mr. Schiff. [OFF MIKE]

1592 Chairman Conyers. It better be.

1593 [Laughter.]

1594 The clerk will report the amendment.

1595 Mr. Schiff. Zero five, Amendment-05.

1596 The Clerk. Amendment to the amendment in the nature of  
1597 a substitute to H.R. 5057 offered by Mr. Schiff of  
1598 California.

1599 [The amendment follows:]

1600 \*\*\*\*\* INSERT \*\*\*\*\*

1601 Chairman Conyers. Without objection, the amendment will  
1602 be considered as read. The gentleman is recognized.

1603 Mr. Schiff. Thank you, Mr. Chairman. I will be very  
1604 quick. Since state backlogs are often substantial and  
1605 federal funds are limited, states have had to develop ways to  
1606 deal with fluctuating year-to-year funding.

1607 Some states have penalty fee structures in place to  
1608 provide a stable and consistent funding stream. Prop 69, for  
1609 example, in California provides a \$1 penalty for every \$10 of  
1610 every fine or penalty of forfeiture that can go into DNA and  
1611 Debbie Smith grant program.

1612 Over \$40 million has been raised through this in  
1613 California. It has taken some of the burden off of the  
1614 federal government and the Debbie Smith grant funds.

1615 States should be encouraged to put in place structures  
1616 that allow their ability to do DNA analysis and not rely so  
1617 heavily on federal resources.

1618 This amendment would authorize the A.G. to provide  
1619 federal matching funds to those states that implement  
1620 permanent funding mechanisms to generate funds, whether by  
1621 penalties or fees, that are allocated by state only for the  
1622 purpose of analyzing DNA samples for law enforcement  
1623 purposes.

1624 So this encourages states to develop ongoing mechanisms  
1625 to fund DNA analysis so the federal government doesn't have

1626 to provide such a substantial portion of their funding for  
1627 this purpose.

1628 Mr. Scott. Will the gentleman yield?

1629 Mr. Schiff. Yes.

1630 Mr. Scott. The gentleman has an additional  
1631 appropriation. The legislative intent of this would be a  
1632 separate funding stream, separate from the Debbie Smith Act,  
1633 so that those who do not comply would not lose funding? Is  
1634 that correct?

1635 Mr. Schiff. Yes, exactly. No one would lose any Debbie  
1636 Smith funds. But you would have an ability to gain  
1637 additional funds under a general law enforcement grant.

1638 Mr. Scott. And this would be a separate fund funded  
1639 under the authorization that such sums—that would be a  
1640 separate funding stream all together.

1641 Mr. Schiff. Yes.

1642 Mr. Scott. I thank the gentleman.

1643 Chairman Conyers. I thank the gentleman for returning  
1644 his time.

1645 Is there any further discussion?

1646 Judge Gohmert?

1647 Mr. Gohmert. Well, if I might move to strike the last  
1648 word on this amendment so that I can ask my friend Mr. Schiff  
1649 a question.

1650 Chairman Conyers. Without objection.

1651 Mr. Gohmert. Did I understand that this amendment would  
1652 not under any situation cause the withholding of the Debbie  
1653 Smith funds?

1654 Mr. Schiff. That is correct. There would be no  
1655 withholding of any Debbie Smith funds. None of what I  
1656 propose today affects a state's ability to get Debbie Smith  
1657 funds. It does provide incentives from outside sources of  
1658 funding.

1659 Mr. Gohmert. I am not seeing a definition of fees or  
1660 penalties in the amendment, and I am a little curious as to  
1661 the effect that might have, what it might create in the way  
1662 of state—do you have any instruction on—

1663 Mr. Schiff. Well, you know, I can only point to—you  
1664 know, some states that provide that a certain part of your—  
1665 the fine that you pay when you are convicted of a crime would  
1666 go into the pot for DNA analysis, and it gives them an  
1667 ongoing revenue stream.

1668 Usually I think the states that do this—it is fines on  
1669 people convicted of different crimes. And the nice thing  
1670 about it is it gives them stable, year on, year off funding.  
1671 They don't have to come to the federal government for such a  
1672 substantial portion of their DNA analysis, and they tend to  
1673 have smaller backlogs.

1674 So I think states should be incentivized to create  
1675 ongoing mechanisms to fund DNA and not be so reliant on the

1676 federal government.

1677 Mr. Gohmert. Okay. Thank you.

1678 Reclaiming my time, with regard to fees and penalties, I  
1679 know there are a lot of states like Texas that already have  
1680 programs that require fees to be paid by defendants as part  
1681 of the criminal fines, fees, probation fees that often  
1682 support victims' funds.

1683 And I would hate for this to end up causing states to  
1684 divert some of the victims' funds' money in order to get  
1685 matching funds from the federal government. That was a  
1686 reservation I have. If the gentleman has a comment about  
1687 that—

1688 Mr. Schiff. Well, you know, I would only say that I  
1689 would hope that states aren't using funds generated in the  
1690 criminal justice system to defray other non-criminal-justice-  
1691 system-related costs, other court costs or other completely  
1692 non-justice-system-related costs.

1693 If this incentivizes states to make sure their resources  
1694 go back into the criminal justice system, I think that is a  
1695 positive thing.

1696 But given, you know, the power of this tool and the fact  
1697 that states are increasingly relying on the federal  
1698 government to fund it, I think it is appropriate for the  
1699 federal government to say, "Yes, we will fund it, but we want  
1700 to incentivize you to develop your own mechanism so that we

1701 are not going to be called upon each year to provide more and  
1702 more federal resources for state backlogs."

1703 Mr. Gohmert. Thank you.

1704 Reclaiming my time, I am not saying Texas or other  
1705 states are diverting funds, but I certainly felt like it was  
1706 a good thing when victims were compensated by funds that  
1707 were, in part, raised from the defendants themselves.

1708 And I know many times I required defendants as part of  
1709 their probation to make payments toward making a victim  
1710 whole.

1711 Mr. Schiff. If the gentleman would yield really  
1712 quickly—

1713 Mr. Gohmert. Certainly.

1714 Mr. Schiff. —nothing in this I think is going to affect  
1715 any state law on restitution for victims, and it is certainly  
1716 not intended to do that. I don't see how it would have that  
1717 effect, and it certainly shouldn't.

1718 Mr. Gohmert. All right.

1719 I yield back.

1720 Chairman Conyers. The gentleman yields back. Thank  
1721 you.

1722 Are there further discussions? If not, all in favor of  
1723 the Schiff amendment indicate by saying "aye." Those  
1724 opposed, say "no." The "ayes" have it.

1725 The gentleman from Tennessee?

1726 Mr. Cohen. Thank you, Mr. Chairman. In a discussion  
1727 with the sponsor of the bill, I believe he concurred that the  
1728 language in the amendment that we voted on was broader than  
1729 he anticipated, and it included misdemeanor acts.

1730 And I would like agreement with the sponsor that he  
1731 would work with me on a bandaged amendment to clarify that in  
1732 element two involving sexual acts that it would be felonies  
1733 of all sorts, not just minors, because minors wasn't my  
1734 objection. It was felonies involving adults would overburden  
1735 the criminal justice system with taking this.

1736 And I would like to work with you on a manager's  
1737 amendment on that subject.

1738 Mr. Schiff. If the gentleman will yield, I am happy to  
1739 work with the gentleman. Really, the intention of the  
1740 amendment is to go after arrests for murder, for rape, for  
1741 violent sex crimes, sex crimes against children.

1742 And we will be happy to work with the gentleman on a  
1743 manager's amendment along those lines.

1744 Mr. Cohen. Thank you very much. I appreciate it. That  
1745 was the basis of my "no" vote previously, because I think it  
1746 was overly broad. Thank you.

1747 Chairman Conyers. Are there any further amendments? If  
1748 not, the vote is on the manager's substitute to H.R. 5057.  
1749 The question is on the manager's substitute as amended, those  
1750 in favor say "aye." All those opposed, say "no." "Ayes"

1751 have it. "Ayes" have it, and the manager's substitute—

1752 Mr. Watt. Mr. Chairman?

1753 Chairman Conyers. Yes.

1754 Mr. Watt. I am not rising to ask for a recorded vote.

1755 I just wanted to make sure that I put into the record that I

1756 am voting against the bill.

1757 Chairman Conyers. Yes. We heard you very clearly, and

1758 it will be reflected in the record.

1759 Mr. Gohmert. Mr. Chairman?

1760 Chairman Conyers. Judge Gohmert?

1761 Mr. Gohmert. Along the lines of my friend, if the ACLU

1762 comes in and throws roadblocks to the Debbie Smith bill

1763 because some of these things were added, I did want it clear

1764 in the record that on this side, some of us were trying to

1765 keep it as a clean bill.

1766 Chairman Conyers. Well, you will get your treatment

1767 very fairly before the ACLU trial board, I assure you. All

1768 right.

1769 Mr. Watt. Mr. Chairman, it would be terrible if I

1770 didn't point out that the judge spoke against the amendment

1771 and then voted for it. And that is the amendment that I have

1772 the serious concern about. It is not the Debbie Smith bill,

1773 obviously.

1774 But it seems to me that there are serious constitutional

1775 concerns about the amendment that Mr. Schiff offered, and—

1776 Chairman Conyers. Well, you don't need to reveal Judge  
1777 Gohmert's contradictions for the record. I don't think that  
1778 there is any useful purpose in the Judiciary Committee.

1779 We are now ready to finally vote on a report H.R. 5057.  
1780 A reporting quorum being present, the question is on  
1781 reporting the bill as amended favorably to the House. All  
1782 those in favor, say "aye." All those opposed, say "no."

1783 The "ayes" have it and the bill as amended is ordered  
1784 reported favorably. Without objection, the bill will be  
1785 reported as a single amendment in the nature of a substitute  
1786 incorporating amendments adopted. Staff is authorized to  
1787 make technical and conforming changes. Members will have 2  
1788 days for additional views.

1789 And finally, we come to our last measure before us, H.R.  
1790 4044, the National Guard and Reservist Debt Relief Act.

1791 Mr. Issa. Mr. Chairman?

1792 Chairman Conyers. And when we left off, the gentleman  
1793 from California, Darrell Issa, had an amendment and I  
1794 recognize him at this point.

1795 Mr. Issa. Mr. Chairman, thank you for recognizing me,  
1796 and I will be very brief.

1797 I want to thank you and the ranking member and all  
1798 those, particularly staff, who worked so hard to find common  
1799 ground that would make this a win-win for all the parties.

1800 So based on the understanding of a very effective and

1801 very creative compromise that you all worked out, I would ask  
1802 unanimous consent to withdraw my amendment.

1803 Chairman Conyers. Without objection, so ordered, and I  
1804 thank the gentleman and recognize the gentleman from Texas  
1805 for an amendment.

1806 Mr. Smith. Mr. Chairman, I have an amendment at the  
1807 desk.

1808 Chairman Conyers. And the clerk will report the  
1809 amendment.

1810 The Clerk. Amendment offered by Mr. Smith of Texas to  
1811 the amendment in the nature of a substitute to H.R. 4044  
1812 offered by Ms. Linda T. Sanchez of California.

1813 Page two, line-

1814 [The amendment by Mr. Smith follows:]

1815 \*\*\*\*\* INSERT \*\*\*\*\*

1816 Mr. Smith. Mr. Chairman, I ask unanimous consent that  
1817 the amendment be considered as read.

1818 Chairman Conyers. Without objection, and the gentleman  
1819 is recognized in support of his amendment.

1820 Mr. Smith. Thank you, Mr. Chairman.

1821 Mr. Chairman, first of all, I want to thank you for  
1822 being an indispensable part of the agreement that we have  
1823 worked out. Without your intervention, we would not have  
1824 reached the common ground that Mr. Issa referred to a minute  
1825 ago.

1826 And let me say to the members of the committee that this  
1827 amendment has gone through a series of permutations and  
1828 changes and evolutions, but I do think we have an amendment  
1829 that at least addresses part of the concerns that many of us  
1830 had.

1831 And I am pleased, Mr. Chairman, that we have reached a  
1832 bipartisan compromise on this legislation. We strongly  
1833 support the mission and appreciate the sacrifice of our  
1834 dedicated reservists and the Guardsmen.

1835 We agree that reservists or Guardsmen who are plunged  
1836 into bankruptcy by the demands of their service should be  
1837 given a helping hand under the bankruptcy code.

1838 This compromise amendment does partially address my  
1839 concerns that the bill emphasize the need for a causal  
1840 connection between the bankruptcies in question and the

1841 service that qualifies Guardsmen and reservists for the  
1842 bill's benefit.

1843       It requires the GAO to study the bill's implementation  
1844 and effect, including the degree to which qualifying  
1845 bankruptcies are causally connected to the qualifying  
1846 service. The GAO study has to be completed within 2 years.

1847       And then this amendment also imposes a 3-year sunset on  
1848 the bill's provisions, the idea there being that we will have  
1849 the result of the GAO study in hand while we consider whether  
1850 or not to extend the bill beyond the 3-year sunset.

1851       Mr. Chairman, with these requirements added, I would  
1852 recommend to my colleagues that we support the amendment as  
1853 well as final passage of the bill.

1854       And, Mr. Chairman, thank you again for your help in  
1855 reaching this agreement.

1856       Chairman Conyers. I thank the gentleman and would  
1857 indicate that the Smith amendment would essentially extend  
1858 the period of time for reservist eligibility from 60 days to  
1859 90 days, require a GAO study to examine any possible abuses,  
1860 and, three, sunset the bill after 3 years so that the  
1861 Congress can assess the effect of the legislation.

1862       And I would like to single out the chairwoman of  
1863 subcommittee number five, Ms. Linda Sanchez, who has worked  
1864 diligently with all of us to reach this accommodation.

1865       And I join in the support of the Smith amendment.

1866 Is there any further discussion? If not, all those in  
1867 favor of the Smith amendment will indicate by saying "aye."  
1868 All those opposed, say "no." "Ayes" have it and the  
1869 amendment is agreed to.

1870 The question is now on the manager's substitute as  
1871 amended. All those in favor, say "aye." Those opposed, say  
1872 "no." The "ayes" have it and the manager's substitute is  
1873 agreed to as amended.

1874 A reporting quorum being present, the question now turns  
1875 on reporting the bill as amended favorably to the House. All  
1876 in favor, say "aye." Those opposed, say "no." The "ayes"  
1877 have it and the bill as amended is ordered reported  
1878 favorably.

1879 Without objection, the bill will be reported as a single  
1880 amendment in the nature of a substitute incorporating  
1881 amendments adopted. Staff is authorized to make technical  
1882 and conforming changes, and all members will have 2 days to  
1883 submit views.

1884 This completes our agenda. Lamar Smith and I have  
1885 agreed to have a summer criminal law review course test on  
1886 the Web page for anybody that would like to apply for summer  
1887 school law school credits that have watched this.

1888 I thank all of the members for their very generous  
1889 cooperation. There being no further business before the  
1890 committee, we stand adjourned. Thank you all.

1891 [Whereupon, at 12:06 p.m., the committee was adjourned.]