

Statement of Crime Subcommittee Ranking Member Louie Gohmert
Subcommittee on Crime, Terrorism and Homeland Security
Hearing on Over-Criminalization of Conduct/Over-Federalization of
Criminal Law
July 22, 2009

Thank you, Chairman Scott.

I am very pleased that the subcommittee is holding this hearing today on a topic that is of particular importance to me and one in which I and my colleague, Chairman Scott, agree upon – which doesn't happen all the time.

The federal code contains nearly 4,500 federal crimes. Recent studies estimate that there are an estimated 56.5 new federal crimes enacted each year. Over the past three decades, Congress has averaged 500 new crimes per decade. This, despite the fact that the federal government lacks a general police power. As the Supreme Court noted back in 1903, in *Champion v. Ames*, "To hold that Congress has general police power would be to hold that it may

accomplish objects not [e]ntrusted to the general government, and to defeat the operation of the 10th Amendment, declaring that ‘the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.’”

Yet Congress’ continuous enactment of new federal crimes has systematically overturned this principle, securing a de facto federal police power under which virtually all criminal conduct can be federally regulated. And many of these laws overlap with existing state laws and blur the lines between traditional federal and state jurisdiction.

Part of this trend towards over-federalization and over-criminalization is the growing expectation that Congress is the arbiter of criminal conduct. Unfortunately, Congress has responded to this pressure with zeal, often legislating in a

vacuum with little regard for existing laws or the tenets of proper criminal statutes. The result is a labyrinth of federal criminal laws scattered throughout many of the 50 titles of the U.S. Code.

The current code is riddled with laws that are outdated, redundant, or inconsistent with other provisions in the code. It has been over 50 years since the criminal code was last revised. My colleague, Mr. Sensenbrenner, is sponsoring legislation to simplify and modernize the criminal code. The bill cuts over 1/3 of the existing criminal code, eliminates competing or duplicative definitions, and consolidates all criminal offenses into title 18.

Such a rewrite would be a tremendous undertaking but one that would be invaluable to both practitioners and Members of Congress.

Unfortunately, many of the new laws enacted by Congress are not targeting what we consider to be criminal conduct such as homicide, assault, or burglary. Many of these laws impose criminal penalties – often felony penalties – for violations of federal regulations. But there is a significant element missing from many of these provisions – criminal intent.

Some of us may not have thought much about the *mens rea* requirement since our law school days but this cornerstone of criminal law is eroding as regulatory crimes are being prosecuted under reduced or even non-existent mental states or intent. For example, a 1993 decision by the 9th Circuit in *U.S. v. Weitzenhoff*, held that “criminal sanctions are to be imposed on an individual who knowingly engages in conduct that results in a permit violation [under the Clean Water Act], regardless of whether the polluter is

cognizant of the requirements or even the existence of the permit.”

The Clean Water Act has also been interpreted to allow a construction supervisor to be sentenced to six months imprisonment after one of his employees accidentally ruptured an oil pipeline with a backhoe. And a Michigan landowner was convicted under the Clean Water Act for moving sand onto his property without a federal permit.

Today, we are joined by two individuals with first-hand experience of this phenomenon. Mr. Krister Evertson was sentenced to 21 months in federal prison for “illegally” transporting chemicals to a storage facility a half mile from his home in Idaho. And Mr. George Norris, who is joined today by his wife Kathy, was sentenced to 17 months in federal prison for what amounts to incorrect paperwork for

importing orchids into the U.S. I appreciate you joining us today to share your stories.

I also wish to acknowledge the efforts of the coalition, which includes the Heritage Foundation and individually Attorney General Ed Meese, the ACLU, the CATO Institute, the National Association of Criminal Defense Attorneys, the American Bar Association, and others, to address over-criminalization and over-federalization. Despite their often diverging interests, these groups have joined together to address this shared interest.

I look forward to hearing from our witnesses and I yield back the balance of my time.