



**Congressional Hearing**  
**“Reining in Overcriminalization: Assessing the Problems,  
Proposing Solutions”**

**MEDIA KIT**

**Subcommittee on Crime, Terrorism, and Homeland Security  
Committee on the Judiciary ~ U.S. House of Representatives**

**Tuesday, September 28, 2010, at 3:00 p.m.  
Rayburn House Office Building, Room 2141**

**Organizations Supporting the Need for Congressional Hearings on Overcriminalization**

American Bar Association (ABA)  
American Civil Liberties Union (ACLU)  
Constitution Project  
Families Against Mandatory Minimums (FAMM)  
Manhattan Institute  
National Federation of Independent Business (NFIB)  
National Association of Criminal Defense Lawyers (NACDL)  
The Heritage Foundation

For media or other information visit, [www.nacdl.org/overcrimhearing](http://www.nacdl.org/overcrimhearing), or contact:

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# **Congressional Hearing on the Problems of Overcriminalization and Reform Proposals**

**Subcommittee on Crime, Terrorism, and Homeland Security  
Committee on the Judiciary  
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Rayburn House Office Building, Room 2141  
3:00 p.m.**

## **Capitol Hill Media Packet Content List**

(All items available online are hyperlinked below)

**Executive Summary**

**Overcriminalization Victim Witness Information**

### **Tab 1 – The “Without Intent” Report – *Without Intent: How Congress Is Eroding the Criminal Intent Requirement in Federal Law***

- Copy of the [“Without Intent” Report](#) (included in front sleeve of media packet)
- [Without Intent Fact Sheet](#) by Brian Walsh & Tiffany Joslyn – *The Heritage Foundation and National Association of Criminal Defense Lawyers*
- [Report: Congress Makes Too Many Vague Laws](#) by Mark Sherman – *AP*
- [The Criminal Intent Report: Congress Must Justify New Criminalization](#) by Brian Walsh – *The Heritage Foundation*

## **Tab 2 – Overcriminalization Op-Eds and News Articles**

- [\*\*Too Many Laws to Keep Straight – One Nation Under Arrest: How Crazy Laws, Rogue Prosecutors, and Activist Judges Threaten Your Liberty\*\*](#) by Roger Lott – *The Washington Times* – 8/17/10
- [\*\*Crime and Punishment in America: Rough Justice\*\*](#) – *The Economist* – 7/22/10
- [\*\*Rough Justice in America: Too Many Laws, Too Many Prisoners\*\*](#) – *The Economist* – 7/22/10
- [\*\*Attacks on Freedom\*\*](#) by John Stossel – *HumanEvents.com* – 7/14/10
- [\*\*Overcriminalization Makes a Joke of Justice\*\*](#) by Jay Ambrose – *The Washington Examiner* – 6/30/10
- [\*\*The Criminalization of Business\*\*](#) by Douglas Smith – *The American Spectator* – 6/16/10
- [\*\*Overzealous Laws Fill Prisons and Jails\*\*](#) by Edwin Meese – *Daytona Beach News-Journal Online* – 4/26/10
- [\*\*Court Late to Rescue Americans from Overcriminalization\*\*](#) by Marie Gryphon – *Roll Call* – 12/11/09
- [\*\*Right and Left Join Forces on Criminal Law\*\*](#) by Adam Liptak – *The New York Times* – 11/24/09
- [\*\*Criminalizing Everyone\*\*](#) by Brian Walsh – *The Washington Times* – 10/5/09
- [\*\*You Commit Three Felonies Per Day\*\*](#) by L. Gordon Crovitz – *The Wall Street Journal* – 9/27/09
- [\*\*Greenberg's Settlement, Spitzer's Folly\*\*](#) by James Copland – *Forbes.com* – 8/26/09
- [\*\*Are You a Federal Criminal?\*\*](#) by J.P. Donlon – *ChiefExecutive.net*

### **Tab 3 – Selected Case Studies in Overcriminalization**

- [Case Study: \*McNab v. United States\*](#) – *The Heritage Foundation*
- [How One Good Man’s Intentions Took Him from a Fuel Cell to a Jail Cell](#) by Quin Hillyer – *The Washington Examiner*
- [Eco-Inventor Wins Victory in Federal Court Case](#) by Quin Hillyer – *The Washington Examiner*
- [Woe to the Man Who Beats Federal Prosecutors](#) by Quin Hillyer – *The Washington Examiner*
- [The Unlikely Orchid Smuggler: A Case Study in Overcriminalization](#) by Andrew Grossman – *The Heritage Foundation*
- [U.S. v. King: It’s Time for Some Prosecutorial Restraint](#) by Richard Samp – *Forbes.com*

### **Tab 4 – Additional Scholarship on Overcriminalization**

- [The Financial Reform Act: A Windfall for Overcriminalization, A Case for Reform](#) – *National Association of Criminal Defense Lawyers*- 6/28/10
- [The Explosion of the Criminal Law and its Cost to Individuals, Economic Opportunity, and Society](#) by William R. Maurer and David Malmstrom – *The Federalist Society* – 1/25/2010
- [Timeline: The Federal Erosion of Business Civil Liberties](#) – *Washington Legal Foundation* – 2010 edition
- [Mens Rea in the Criminal Law: Current Trends](#) by Marie Gryphon – *The Federalist Society* – 12/4/09
- [It’s a Crime?: Flaws in Federal Statutes That Punish Standard Business Practice](#) by Marie Gryphon – *The Manhattan Institute* – 12/09
- [Enacting Principled, Nonpartisan Criminal-Law Reform: A Memo to President Obama](#) by Brian Walsh – *The Heritage Foundation* – 1/9/09
- [Mens Rea Requirement: A Critical Casualty of Overcriminalization](#) by John Hasnas – *Washington Legal Foundation* – 12/12/08

- [\*\*Sufficiently Armed: The Federal Toolbox for Punishing Criminality in the Subprime Market\*\*](#) by Stephanie Martz and Tiffany Joslyn – *National Association of Criminal Defense Lawyers* – 10/19/08
- [\*\*Reforming Corporate Criminal Liability to Promote Responsible Corporate Behavior\*\*](#) by Andrew Weissman, Richard Ziegler, Luke McLoughlin, and Joseph McFadden – *U.S. Chamber Institute for Legal Reform* – 10/08
- [\*\*No Retreat Now: The Long Fight to the Protect Attorney-Client Relationship Against Aggressive Prosecutors Can Only End with Legislation\*\*](#) by Brian Walsh and Stephanie Martz – *Legal Times* – 9/1/08
- [\*\*A Very Brief History of the Criminalization of Everything\*\*](#) by Stephanie Martz & Ivan Dominguez – *National Association of Criminal Defense Lawyers* – 9/08
- **Doing Violence to the Law: The Over-Federalization of Crime** by Brian Walsh – *Federal Sentencing Reporter* – 6/08

#### **Tab 5 – General Listing of Media Coverage on Overcriminalization**

- **Media Outlets Covering the “Without Intent” Report**

#### **Tab 6 – Additional Overcriminalization Materials**

- **Additional Overcriminalization Materials Available**

# Overcriminalization: Assessing the Problems, Proposing Solutions

## WHAT IS OVERCRIMINALIZATION?

In its current state, the federal criminal justice system frequently prosecutes “crimes” and imposes sentences that are not based on sound principles of justice. Many of the approximately 4,450 criminal offenses in the U.S. Code are poorly defined, lack criminal-intent requirements that are sufficient to protect the innocent, and are difficult or impossible to connect to notions of moral wrongdoing. The estimated 300,000 federal regulations (in the Code of Federal Regulations) that may be enforced with criminal penalties include an even greater number of these same flaws.

The result? Innocent people caught in heartbreaking, Kafkaesque tales of conviction, imprisonment for persons who made mistakes but had no criminal intent, sentences that are far out of proportion with the wrongfulness of the “crime,” and unnecessary prosecutions that waste judicial resources. The tragedy for some citizens, and specter of tragedy for the rest of us, is that our liberties are at the mercy of the laws of probability and the idiosyncratic charging decisions of prosecutors. Almost anyone can be prosecuted and convicted under one of the tens of thousands of federal criminal offenses, and it is happening to more and more unsuspecting Americans each year. Unbridled lawmaking and enforcement that is not tethered to this nation’s founding principles does not well serve its citizens or America’s future.

**On Tuesday, September 28, 2010, the Subcommittee on Crime, Terrorism, and Homeland Security of the House Judiciary Committee will take the next step toward principled criminal justice reform when it holds a bipartisan hearing entitled “Overcriminalization: Assessing the Problems, Proposing Solutions.” Chairman Robert “Bobby” Scott (D-VA) and Ranking Member Louie Gohmert (R-TX) will convene the hearing at 3:00 p.m. in Room 2141 of the Rayburn House Office Building. We encourage you to attend this hearing and support the growing effort to enact sensible federal criminal law reforms.**

## WHY IS OVERCRIMINALIZATION A MAJOR PROBLEM?

Overcriminalization threatens the civil liberties of respectable, hard-working individuals and burdens America’s economic growth and future.

- Creating “crimes” that are overly complex and numerous and that punish conduct that evokes no sense of moral wrong makes every law-abiding American vulnerable to losing his liberty even when he does not know that he has violated a law. Our criminal laws have become a trap for the unwary and unfairly punish innocent mistakes.
- It is a core principle of the American system of justice that no one should be subjected to criminal prosecution unless they intentionally engage in inherently wrongful conduct or conduct that they know to be unlawful. Only in such circumstances is a person truly blameworthy and deserving of the harsh sanctions associated with criminal punishment. Yet in recent decades Congress has enacted scores of fundamentally flawed criminal statutes that lack adequate criminal intent (*mens rea*) protection for innocent actors. The average American is thus left without protection from the unprincipled proliferation of vague and overbroad criminal offenses.
- Needless prosecutions are a drain on our economy and cause people to lose jobs. Even when a target is ultimately found to be innocent (e.g., now defunct international accounting firm Arthur Andersen), the negative economic effects are long lasting.

- Overcriminalization has resulted in unnecessary incarceration in situations where society would be better served by exacting a civil penalty – the legal sanction that was far more common before Congress began its out-of-control creation of new crimes.
- When taxpayer money is sapped by a criminal justice system full of vague and overlapping laws, valuable resources are wasted on unnecessary and repetitive court proceedings.
- An over-expansive criminal justice system damages America by discouraging business investment and job creation both inside and outside the U.S. Business owners of all sizes rightly consider vague and burdensome criminal laws a threat to a company’s growth, and as a result, often choose places of business overseas. The current legal framework thus inhibits lawful business risk-taking and stifles creativity and innovation without any marked societal benefit.

## HOW WIDELY RECOGNIZED IS THE PROBLEM?

Those caught in the net of overcriminalization of conduct in the United States are no longer the only ones who recognize its dangers. Overcriminalization is becoming a well-known problem – on display in media outlets across the country and around the world.

Late last fall, the *New York Times* ran a front-page story by Adam Liptak entitled “Right and Left Join Forces on Criminal Justice,” highlighting the cooperation of a broad coalition of left-leaning and right-leaning organizations on the subject of criminal justice reform. The *New York Times* article specifically noted the work of many members of this coalition, which includes the National Association of Criminal Defense Lawyers (NACDL), The Heritage Foundation, American Bar Association (ABA), American Civil Liberties Union (ACLU), Cato Institute, Families Against Mandatory Minimums (FAMM), Federalist Society, Manhattan Institute, and Washington Legal Foundation. The coalition has built a non-partisan working group dedicated to advancing a reform agenda promoting less government, less criminalization, and less regulation.

In July of this year, the cover of one of the world’s most respected news magazines, *The Economist*, analyzed “Why America Locks Up Too Many People.” Inside, two articles addressed the issue of overcriminalization. The cover article featured George Norris, who was one of two overcriminalization victims whose stories were featured during the July 2009 hearing on overcriminalization before the House Subcommittee on Crime, Terrorism, and Homeland Security.

The July 2009 hearing ([http://judiciary.house.gov/hearings/hear\\_090722\\_2.html](http://judiciary.house.gov/hearings/hear_090722_2.html)) was supported by members of the coalition and brought public interest and media attention to the critical issues of overcriminalization and the over-federalization of crime. Details concerning media coverage of the 2009 hearing have been included in this media packet.

Over the last two years, members and allies of this coalition have produced well-researched and well-received publications on overcriminalization. Civil rights attorney and long-time ACLU member Harvey Silverglate published his widely acclaimed book, *THREE FELONIES A DAY: HOW THE FEDS TARGET THE INNOCENT*, which resulted in radio coverage and follow-on pieces such as Gordon Crovitz’s review in the *Wall Street Journal* proclaiming that criminal law has “become too vague and the concept of [criminal] intent has disappeared.”

Both the Washington Legal Foundation (WLF) and Manhattan Institute released major reports. WLF’s “Federal Erosion of Business Civil Liberties” is a comprehensive study of the often unnecessary expansion of regulatory crimes and the degradation of various protections against unjust criminal

prosecution and punishment for both employees and employers. Marie Gryphon's report for the Manhattan Institute focuses on the flaws in federal criminal law that have led to the punishment of conduct that many criminal defendants are not likely to have known was prohibited. In addition, the Federalist Society published papers on the erosion of criminal-intent requirements, vicarious criminal liability, and the costs of overcriminalization to individuals and economic opportunity.

In the wake of these publications, Heritage and NACDL released their groundbreaking report, "Without Intent: How Congress Is Eroding the Criminal Intent Requirement in Federal Law." In a rare Washington event – a bipartisan press conference in the U.S. Capitol – Reps. Bobby Scott (D-VA) and Louie Gohmert (R-TX) introduced and lauded the report and the unusual collaboration that produced it. The report and its announcements also earned an exclusive story by the *Associated Press's* Mark Sherman ("Report: Congress Makes Too Many Vague Laws").

As soon as the AP story hit the wires, news outlets around the nation took note of the report and the Left-Right coalition pursuing criminal-law reform. According to the Meltwater News service, in the 30 days following the report's release, approximately 300 stories in the media discussed this important report. From the *San Diego Union-Tribune* and *Seattle Post-Intelligencer* to the *Cleveland Plain-Dealer* and *Boston Globe*, newspapers across the country reported that Congress has been eroding the criminal intent requirement in federal law, as did dozens of local television and radio stations. The report also earned coverage throughout the Internet and political blogosphere, including on popular websites ranging from Salon.com and the Huffington Post to FreeRepublic.com and National Review Online.

(A list of the news organizations, blogs, and other media sites covering the "Without Intent" report has been included in this media packet. The list succinctly illustrates that extent of the national media attention to concerning the overcriminalization problem and the unique Left-Right coalition organized to fight it.)

The Heritage Foundation's March 2010 book, ONE NATION UNDER ARREST, has also garnered widespread reporting by television, radio, and print media. It highlights the case studies of almost two dozen overcriminalization victims. ONE NATION UNDER ARREST was the subject of John Stossel's primetime show on the Fox Business Channel, which aired two dozen times in July, August, and September and is currently being highlighted by nationally syndicated radio host Marc Levin. It has received favorable reviews from *The Washington Times*, *Pittsburgh Tribune-Review*, and other media outlets.

This widespread national media attention is a result of the American public's growing concern over the current state of federal criminal law. Liberals, conservatives, and libertarians alike view the unchecked growth of criminal law and the erosion of criminal-intent protections as a frightening abandonment of essential civil liberties. As such, there is a groundswell of support for principled, bipartisan action to quell the problems of overcriminalization.

## **WHAT CAN BE DONE TO FIX THE PROBLEMS?**

The recently published "Without Intent" report proposes a number of principled ideas for addressing the problem of overcriminalization, preventing the erosion of the criminal intent requirement, and effectively reforming the federal criminal justice system. Based upon the findings of the report, Congress should consider:

- Providing detailed written justification for and analysis of all new federal criminalization.

- Codifying the common law’s venerable Rule of Lenity, which grants defendants the benefit of the doubt when Congress fails to legislate in a clear manner.
- Enacting default rules of interpretation ensuring that guilty-mind (*mens rea*) requirements are adequate to protect against unjust conviction.
- Requiring adequate judiciary committee oversight of every bill proposing criminal offenses or penalties.
- Redoubling efforts to draft every federal criminal offense with clarity and precision.

## WHAT IS CONGRESS DOING TO ADDRESS THE PROBLEM?

In light of the convoluted state of our criminal justice system and the bipartisan outcry from average voters, opinion leaders, and policy organizations, Congress has begun to hear the call for more responsible criminal lawmaking and adherence to the fundamental American traditions of liberty and justice. Last year’s hearing on overcriminalization represented a congressional first step toward acknowledging the overarching problem.

The dangerous, convoluted state of federal criminal law has spurred a concerted outcry among a large and growing contingent of organizations and opinion leaders. These groups and individuals have been calling on Congress to pass laws in a responsible manner that adheres to the fundamental traditions of liberty and justice. **The House Judiciary Committee’s Subcommittee on Crime, Terrorism, and Homeland Security (Chairman Robert “Bobby” Scott (D-VA) and Ranking Member Louie Gohmert (R-TX)) will hold a hearing entitled “Overcriminalization: Assessing the Problems, Proposing Solutions” on Tuesday, September 28th, 2010 at 3:00 p.m. in Room 2141 of the Rayburn House Office Building. We ask that you attend this hearing and support our effort to see federal criminal law sensibly reformed.**

## EXPECTED HEARING WITNESSES

- Abner Schoenwetter, *Overcriminalization victim*
- Bobby Unser, *Overcriminalization victim*
- Jim Lavine, *President, National Association of Criminal Defense Lawyers (NACDL)*
- Ellen Podgor, *LeRoy Highbaugh, Sr., Research Chair and Professor of Law, Stetson University College of Law*
- Stephen Smith, *Professor, University of Notre Dame Law School*
- Brian Walsh, *Senior Legal Research Fellow, The Heritage Foundation*
- Andrew Weissmann, *Partner, Jenner & Block, LLP, and former Director, Department of Justice – Enron Task Force*

## **Abner Schoenwetter – Overcriminalization Victim**

### **Subcommittee on Crime, Terrorism, and Homeland Security – September 28, 2010**

At the age of 64, Abner (“Abbie”) Schoenwetter is trying to start his life over again. He has been serving an 8-year sentence in federal prison for a seafood sales transaction. According to the U.S. government, a lobster catch Abbie had agreed to purchase violated three Honduran administrative regulations. The Honduran government filed a legal brief stating that the three regulations were invalid and unenforceable against Abbie and the three other persons charged by the U.S. in the case. The Attorney General of Honduras wrote to the U.S. Attorney General certifying that this was correct. How is it then that this hard-working small businessman with no criminal history was convicted of multiple felonies and sentenced to 97 months in federal prison?

- Abbie was a Florida seafood importer and distributor who occasionally bought lobster tails gathered in the waters of the Caribbean near Honduras.
- In February 1999, the National Marine Fisheries Service (NMFS) received a fax about a cargo vessel bound for Alabama. It alleged that the vessel’s lobster catch was in violation of Honduran regulations. The anonymous tipster claimed that the lobsters were undersized and in plastic bags, not cardboard boxes, as supposedly required by Honduran regulations.
- The NMFS seized the shipment under the Lacey Act, which makes it a federal crime to violate any fish or wildlife law or regulation of any nation on earth. The lobsters were to be bought and distributed by Abbie and other Americans.
- After the seizure, federal officials spent several months scouring Honduran law to find a basis for criminal charges. The theory they came up with was that the lobster catch violated three obscure Honduran administrative regulations (1) requiring seafood to be exported in cardboard boxes, (2) prohibiting harvesting lobsters with tails shorter than a specified length, and (3) prohibiting the destruction or harvesting of eggs or offspring of aquatic species.
- In November 2000, a federal jury found Abbie and his co-defendants guilty of multiple counts related to violations of the Lacey Act, all premised on violations of the invalid Honduran regulations.
- In June 2002, the Honduran government filed a brief supporting Abbie and his co-defendants’ appeal. The brief stated the following about Honduran law: (1) the size regulation at issue was void *ab initio* and had no legal bearing on the case whatsoever, (2) the packaging regulation at issue had been repealed in 1995 and therefore was not in effect during the period of alleged criminal activity, and (3) the egg-harvesting regulation at issue never prohibited the purported activity of the co-defendants and had no legal effect because of its retroactive repeal.
- Despite the protests of the Honduran government, the appeals court affirmed the convictions. An April 2003 letter from the Attorney General of Honduras criticized this decision and reasserted the invalidity of the regulations that served as the basis for Abbie’s conviction.

Abbie was released on probation on August 27, 2010. But throughout his incarceration, Abbie’s wife and their three children have suffered extensive stress-related illnesses and have lived on the edge of bankruptcy. They never thought such things could happen in America.

## **Robert “Bobby” Unser – Overcriminalization Victim**

### **Subcommittee on Crime, Terrorism, and Homeland Security – September 28, 2010**

Three-time Indianapolis 500 winner Bobby Unser has been an avid adventurer and outdoorsman all his life. But never did he think that his love for the outdoors would land him on a path to being deemed a federal criminal. Since his retirement from competitive auto racing, Bobby has spent much of his time in and around the mountains of northern New Mexico and southern Colorado. In December 1996, he and a friend got lost in those mountains while snowmobiling and nearly died, but Bobby’s resourcefulness and determination saved his friend’s life. Bobby suffered dehydration and frostbite and had to be hospitalized. After returning home, Unser soon learned that he faced a possible \$5000 fine and up to six months imprisonment. How is it that someone who nearly lost his life in a blizzard suddenly became the target of federal prosecution?

- Just before Christmas, Bobby Unser and his friend got caught in a 50 to 70 mile an hour ground blizzard that came up suddenly while they were lawfully snowmobiling in permitted areas of a mountainous national forest just north of the Colorado-New Mexico border.
- With very little visibility in the blizzard, Bobby and his friend quickly got lost and disoriented. When the snowmobiles got stuck and broke down, the two men were forced to abandon their sleds and dig a snow cave for shelter to survive the first night. They spent the following day and night trekking through deep snow in 20-below temperatures before finally reaching help. Bobby was hospitalized for frostbite, dehydration, and exhaustion.
- Following his recovery in January, Bobby sought the assistance of the National Forest Service to locate his lost snowmobile. He reviewed maps with Forest Service personnel, openly discussed his ordeal, and identified a potential location for pursuing the search. The Forest Service personnel never identified themselves as law enforcement agents or indicated that they had opened a criminal investigation against him.
- At the end of the second day’s discussion, federal officials charged Bobby with operating a motorized vehicle inside a National Wilderness area, a federal crime which carries a maximum sentence of up to six months in jail or prison. Given the nature of his ordeal and the absurdity of the criminal charge, Bobby opted for a trial.
- 16 U.S.C. § 551 and 36 C.F.R. § 261.18(a) fail to state clearly whether the government is required to prove that a person accused of these offenses acted with criminal intent. At trial, the government argued that they did not have to prove that Bobby acted with criminal intent. According to prosecutors, the offenses are strict liability and Unser could be convicted even though he had no intention of entering a wilderness area and had not knowledge that he had done so. The federal trial judge agreed with the government and found Bobby guilty.
- No one knows for certain whether Bobby’s snowmobile had entered the wilderness area after he and his friend got lost. Yet the judge deemed conclusive on this hotly disputed question the testimony of a rescue worker who twice described his own estimate of where the snowmobile was ultimately found as “a guess.” The federal court of appeals called this witness’s testimony “far from precise,” but affirmed Bobby’s conviction nonetheless.

Because of this ordeal, Bobby has become an active supporter of overcriminalization reform and is determined to help see that no one is convicted for actions they took without any intending to violate a law or knowing that what they were doing was illegal or otherwise wrongful.

## **Krister Evertson – Overcriminalization Victim**

**(Mr. Evertson Testified Before the House Judiciary Committee’s Subcommittee on Crime, Terrorism, and Homeland Security on July 22, 2009)**

Growing up, Krister Evertson, an Eagle Scout, was a National Honor Society member who spent two years after high school serving the deaf and hearing impaired in California and Indiana. A science whiz, Krister graduated high school one year early with a 4.0 GPA and a passion for invention and helping to make the world a better place. As an adult, Krister invested both financially and personally in his love for science by turning his interest in alternative energy into a small technology business. Up until May 27, 2004, Krister’s only experience with law enforcement had been a couple of parking tickets. On that day, everything changed as he became a victim of overcriminalization and his life turned into a nightmare.

- In 2000, Krister began work to turn his dreams into reality. Borrowing some money from his family, Krister purchased equipment and materials to launch a business. Unfortunately, before he could reach success, the money ran short and he had to put the business on hold.
- He carefully stored all his research materials and equipment in 3/8-inch-thick stainless steel tanks, sealed them shut to prevent any accidents, and stored them in a company lot under the supervision of a friend until he could return to his business.
- While in Alaska caring for his 80-year-old mother, Krister generated some income by selling some of his supplies. Selling and shipping raw sodium is perfectly legal but, because it can be hazardous, it usually has to be shipped by ground, not air. Krister carefully packaged it, checked “ground transportation” on the shipping bill, and sent it to the buyer.
- On May 27, 2004, a black SUV full of armed federal agents, forced Krister’s car off the road. The agents spilled out and arrested him at gun point. They interrogated him and, after he truthfully answered all their questions, they threw him in jail.
- The government charged Krister with failure to put a federally mandated sticker on his sodium shipment. Unbeknownst to Krister, in Alaska, UPS actually ships its “ground” packages by air. Thus, despite his clear intention to ship the package by ground—as evidenced by his selections of “ground” on the shipment bill and payment for “ground” shipping—the government declared the mistakenly omitted sticker a federal criminal offense.
- While on trial in Alaska, the Environmental Protection Agency raided Krister’s storage facility in Idaho—based on the truthful information he provided when questioned—and declared his valuable materials “abandoned” toxic waste to be destroyed. In all, the EPA spent \$430,000 destroying Krister’s life work.
- When the jury in the Alaska sticker case found Krister innocent, the government turned around and charged him again, this time under the federal Resource Conservation and Recovery Act (RCRA) for his alleged abandonment of toxic materials. The provision of RCRA under which Krister was charged is so broad and requires so little evidence of criminal intent that he was found guilty and sentenced to 21 months in prison.

Krister spent nearly two years in prison and completed his sentence in August 2009. After his experience, Krister decided to speak out about his unfair and unjust treatment. Believing that this is not how criminal justice is supposed to work in the land of the free, he is using his experience to promote overcriminalization reform efforts.

Media Kit: Evertson Case Summary

**George Norris – Overcriminalization Victim**  
**(Mr. Norris’s Wife, Kathy, Testified Before the House Judiciary Committee’s**  
**Subcommittee on Crime, Terrorism, and Homeland Security on July 22, 2009)**

George Norris once had a passion for life. A father, grandfather, and elderly retiree, he turned his orchid hobby into a part-time business, importing orchids from all over the world and reselling them to local flower enthusiasts at plant shows and other events. He never made more than a few thousand dollars a year from orchid sales, but it kept him engaged and provided his family with a little extra money as his wife Kathy neared retirement. Both their lives took a sickening turn for the worse on October 2003, when federal agents stormed their property and set in motion a chain of events that eventually resulted in George’s spending 17 months in federal prison.

- On October 28, 2003, three pickup trucks full of federal agents from the U.S. Fish and Wildlife Service appeared outside George’s home. Clad in protective Kevlar and bearing semi-automatic weapons, the government agents raided the property and forced George to remain seated in his kitchen under supervision while they spent half a day ransacking his home and seizing his belongings. The agents refused to tell George what they were searching for or what he had done to prompt such a show of force.
- The agents left the property, and for months after the raid George remained unaware as to its cause. After five months of silence from the government, George wrote a letter to the federal prosecutor’s office to inquire about the matter. In a mute response, the government returned his personal computer, which was now inoperable.
- Although the federal investigation confirmed that George had never imported or sold any prohibited orchids, he was nevertheless indicted in Miami for “smuggling.” His crime, at its core, was a paperwork violation – the orchids George had imported were legal, but a small percentage of the documentation for the orchids purchased was inaccurate. Despite every effort to comply with the law, this simple mistake resulted in a federal criminal conviction.
- George requested a venue transfer to bring the case from Miami to his home state of Texas, which the court denied. Knowing he was innocent, George fought the complicated paperwork charges to the best of his ability given his limited financial resources.
- When George and Kathy’s savings were wiped out, George very reluctantly gave up the fight and pled guilty to the baseless charges. Although his attorney indicated he might avoid a criminal sentence, he was sentenced to 17 months in federal prison.
- George, in his late sixties at the time of his conviction, entered prison with a host of medical problems including diabetes, cardiac complications, arthritis, glaucoma, and Parkinson’s disease. While incarcerated, George’s health declined even further and he has since developed depression, paranoia, and sleep complications.

In her testimony before Congress in July 2009, Kathy described the destructive impact this traumatic experience has had their family. George has become detached from his family and is no longer interested in gardening or spending time outdoors. Often afraid now to even leave his home, George is restricted by his status as a convicted felon from voting or hunting with his grandchildren, a Norris family tradition for generations. George and Kathy have repeatedly expressed their hope that, by sharing their story, they will keep other families from becoming the victims of overcriminalization.

## **Media Outlets Covering The “Without Intent” Report**

13Wham.com

14WFIE.com

2 News

21Wfmj.com – Ohio

77 WABC

8 News Now

9 KTRE.com

970 AM KNNU Radio – Nevada

ABC 27 HD – Florida

ABC 33/40 – Virginia

ABC 40

ABC 7 News – Virginia

Abc4.com

Action 3 News

AJC.com

Alaska Journal of Commerce

Amarillo.com

Ap.brainerddispatch.com – Minnesota

Appeal-Democrat – California

Associated Press

Bay Ledger NewsZone

Bay News 9

Media Kit: *Without Intent* Report Press Coverage

BlueRidgeNow.com

Boston Globe

Boston Herald

Casa Grande Valley Newspaper –Arizona

CBS47.tv

Centre Daily Times

Charlotte Observer

Chippewa.com

The Houston Chronicle

Comcast.net

Daily Press – California

Dailycomet.com

DailyTimes.com

El Paso Times

Eyewitness News 12 – Kansas

Federal News Radio 1500 AM – Washington

FindLaw

Forbes.com

Fox 14 TV

Fox 4

Fox12idaho.com

Fox23.com

Fox28.com

Fredericksburg.com

Free Library

Free Republic

Fresno Bee

Gainesville.com – Florida

GOPUSA

Goupstate.com

Grits for Breakfast

Hawaii Reporter

Herald & Review – The Midwest – Illinois

Herald-Tribune

Herald-Zeitung – Texas

Houma Today – Louisiana

Huffington Post

IdahoStatesman.com

Independent Mail – The South – South Carolina

JournalGazette.net

K5 The Home Team

Kaaltv.com – Minnesota

KAIT 8

Kansas City Star

KCAU-TV – Iowa

KCBD NewsChannel

KCBS All News 740 AM

KCOY

KFMB – TV

KFVS12

Khq Right Now

KION

KIVI-TV

KJCT8 News

KLBJ News Radio 590 AM – Texas

KLFY TV 10 – Louisiana

KLKN – TV

KLTV 7 News – Texas

Kmir6

KMOV.com – Missouri

KMPH Fox 26

KMTV3 – Omaha

KNDO KNDU Right Now

KOAM-TV

KOB.com

KOIN News 6

KOLD News 13

Kota Territory News

KPLC NBC-7

KPTK

KPVI News 6

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KSLA CBS-12

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KSTP TV – Minnesota

KSWO

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WALB News 10

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WATE 6 News

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WCAX CBS-3

WDAM NBC-7

WDBJ CBS-7

WDT Online –Wisconsin

WECT NBC-6 – North Carolina

WFLX Fox-29 – Florida

WGEM

WHEC-TV

White Collar Crime Prof Blog

WISTV NBC-10

WKBT TV

WKM.com

WKOW 27

WLBT NBC-3

WLNS CBS-6 – Michigan

WLOX ABC-13

WMBF News

WND

WOI ABC-5

WOKV AM 690 and 106.5 FM – Florida

World News

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WQOW TV

WRAL.com

WRCBtv.com – Tennessee

WRIC ABC-8

WSRadio.com – Georgia

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  - *Criminalizing Success: The Political Prosecution of an American Businessman*
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