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WEDNESDAY, JULY 29, 2009

Caught up by our overcriminalized society

In 2007, [reported](#) Idaho's KIDK, Channel 3, Krister Evertson was "convicted of illegally transporting and storing hazardous waste. ... Evertson failed to properly dispose of sodium metal, and the EPA was called in to clean up the mess." In a [press release](#) trumpeting the case, the Environmental Protection Agency was more specific, saying, Evertson was found guilty of "violating the Hazardous Materials Transportation Safety Act and illegally storing and disposing of hazardous waste, violations of the Resource Conservation and Recovery Act." But wait! Just last week, Evertson testified before a [bipartisan congressional hearing](#) on how federal law has crept into every nook and cranny of life and overcriminalized conduct. What's going on here?

As it turns out, Evertson's conviction was the federal government's second try against him in an effort that has all the appearances of a vendetta based on over-vigorous application of a spiderweb of petty rules. It all began when the inventor and fuel cell entrepreneur was run off the road in Alaska on May 27, 2004, by armed federal agents. As he says in his [testimony](#) (PDF) to the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security:

The charge against me was that I hadn't put the right label on the box when I shipped some raw sodium that I had sold on eBay. Stored improperly, sodium can be hazardous, so it usually has to be shipped by ground. I carefully packaged the sodium that I sold and even checked "ground transportation" on the bill when I went to ship the packages. But what I didn't know was that, in Alaska, UPS actually ships its "ground" packages by air. And that was against the law.

Rather than charge me with a violation and collect a fine, the

ABOUT ME



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government decided to bring the full weight of the law down upon me. I refused to plead guilty, because I was not, and so the prosecution pushed for years in prison. It took two years, but finally the jury acquitted me of every charge.

That's right, *acquitted*.

But Hell hath no fury like a government official frustrated -- and the feds weren't out of tricks. You see, while Evertson was detained and tried in Alaska, his chemical supplies were stored in a facility back home in Idaho. And since he was behind bars and unable to visit the storage facility, he could be charged with ... abandoning hazardous waste? Really?

Really.

As the *Washington Examiner* reported earlier this year:

Despite his acquittal in Alaska, federal authorities filed new charges against Evertson in Idaho for allegedly illegally transporting his materials the half mile from his home to the storage facility and improperly disposing of "hazardous" waste, all based on strained readings of EPA regulations.

Evertson claimed he had stored the materials properly and they were perfectly secure.

"My expert witness said the stainless steel container could safely contain the intermediate process stream indefinitely, that means forever. The stainless steel was 3/8 of an inch thick. I bought it from the Long Beach, California, Naval Yard. It was completely enclosed.... I could have neutralized all of it for \$200," Evertson said. ...

Never mind that Evertson had clearly saved the material for future use rather than abandoning it. Never mind that it would be potentially dangerous only if taken out of the storage materials Evertson had so carefully constructed.

And never mind, finally, that, in the words of Evertson's appellate brief, none of the materials were "discharged into the air, land or sea," and the government failed to produce any evidence "that the defendant intended this to happen."

Indeed, the brief notes, "the EPA witness, Marc Callaghan, testified that the materials became hazardous waste [only] when the EPA disposed of them."

Note that Evertson was researching fuel cells with an eye to

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developing *cleaner* energy. His violation of environmental law in the first case was technical and inadvertent, and in the second case could be charitably described as -- oh Hell, forget charity -- it was BS.

But the feds got their way the second time around. With a law that required no criminal intent on the part of Evertson, the violation of which was entirely because Evertson had been detained by the people now charging him with criminal activity, the man was convicted. Off to prison he went.

The reason we're hearing about Krister Evertson is not because his case is atypical, but because he is lucky enough to have strong allies. His case has been taken by the [Washington Legal Foundation](#), which is appealing his conviction. The effort of which the appeal is part is supported by the American Civil Liberties Union, the Federalist Society, the American Bar Association, the Cato Institute and the Constitution Project. Out of public view, many *many* other people have suffered arrest, trial and imprisonment based on a host of regulations both too numerous and too obscure to be knowable.

Testifying before the same subcommittee, Professor James Strazzella, President of the Temple University Beasley School of Law, [said](#) (PDF):

The amount of individual citizen conduct that is now potentially subject to federal criminal control has increased in startling proportions in the last several decades, beyond any understandable interest in dealing with federal programs, truly interstate issues, or international crime. ...

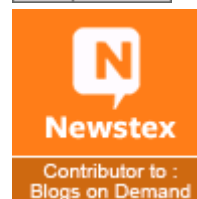
Strazzella knows of what he speaks. In 1998, he authored a report on the metastasizing mass of federal crimes for the American Bar Association. *The Federalization of Criminal Law* (PDF) found, in part:

So large is the present body of federal criminal law that there is no conveniently accessible, complete list of federal crimes. Criminal sanctions are dispersed in places other than the statutory codes (for example, rules of court) and therefore can not be located simply by reading statutes. A large number of sanctions are dispersed throughout the thousands of administrative "regulations" promulgated by various governmental agencies under Congressional statutory authorization. Nearly 10,000 regulations mention some sort of sanction, many clearly criminal in nature, while many

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others are designated "civil."

The federal government's excuses for arresting you and locking you behind bars have only increased since the publication of that report.

So the next time you see a brief news blurb about some "evil" offender who ran afoul of the law with seeming disregard for public safety, and who is publicly vilified in government press releases, keep in mind that there may be more to the story. You could well be looking at another Krister Evertson, who hurt nobody, intended no legal violation, and was tripped up by a maze of laws of the sort that you yourself may unknowingly violate every day.

Labels: [government out of bounds](#)

POSTED BY J.D. TUCCILLE AT 6:25 AM 

3 COMMENTS:

 [Bill Koldewyn](#) said...

It's a good thing today's laws and regs were not in place when I was in Highschool -- I'd still be in jail. We played with sodium and potassium and phosphorus and even radium chloride and made nitroglycerin and a whole lot more. And I still have all my fingers. The truth is, there are so many laws, anyone of us could be charged with something at any time so we are all captives in a sense.


So, having complained, what do we do? I fear the scenario of "Unintended Consequences" by John Ross (or something like it) may become the only way back.

JULY 29, 2009 10:27 AM

 [BobG](#) said...

Seems like any time someone beats a federal rap, they go after the person on some sort of a personal vendetta; too bad they can't channel some of that into going after criminals.

JULY 29, 2009 3:31 PM

 [Joshua](#) said...

Sounds to me like they (the Feds) are the criminals

JULY 29, 2009 4:42 PM

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