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Information and opinion on the U.S. litigation system

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With attention from the likes of George Will and the Wall Street Journal, the "whale whistling" story has shed light on the concept of overcriminalization. [POL]. By now the facts of Nancy Black's predicament are well-known: She is being charged for making a "false statement" concerning her whale-watching activities to federal officials under Title 18, Sec. 1001 of the U.S. Code. This statute has proven quite useful to the feds, especially when they are unable to pin any other charges on a person they suspect of wrongdoing (like Ms. Black, who was originally under investigation for whale harassment).

Could it be that Sec. 1001 - an already overbroad statute - could be getting even broader? Lost in the obsession over *NFIB v. Sebelius* at the end of the Supreme Court's recent term was the Court's denial of certiorari in *King v. United States*, a case involving Sec. 1001. In *King*, the Ninth Circuit ruled that an Idaho rancher who lied to *state officials* could face *federal* criminal liability.

The [Ninth Circuit] wrote that "King lied to Klimes, one of the [Idaho] investigators, in order to defeat the investigation. A willful injection of fluid into a deep well without a permit from the State of Idaho is a federal crime under the Safe Drinking Water Act. Therefore, King made a false statement in a 'matter within the jurisdiction' of the United States." The Court's argument, in other words, was the essence of the overfederalization: 'You violated a state law and you lied about it to a state official. That's a federal offense.' [rightoncrime.com].

An amicus brief was filed in the case by a broad coalition of organizations (from the Cato Institute to the National Association of Criminal Defense Lawyers), noting that before the year 1984, Sec. 1001 was only used when false statements were made to federal officials; since then, however, it has been extended to create federal criminal liability for false statements made to state officials as well.

The trend toward more federal criminal liability - dubbed "overfederalization" of crime - is not limited to Sec. 1001. In fact, stories abound of individuals becoming ensnared in abstruse and obscure federal laws - and even facing jail time as a result. [Previously on POL]. In fact, just yesterday, the Heritage Foundation highlighted an effort to pass another redundant federal criminal law:

The SAFE DOSES Act, which just passed the House, makes stealing medical equipment a federal crime punishable by up to 30 years in prison and a $1,000,000 fine.

There is no doubt that conduct of the kind mentioned in the SAFE DOSES Act is wrong and should be punished criminally. But does it need to be prosecuted on the federal level? Are the state laws governing the crimes of theft, burglary, and larceny inadequate to address the crime of stealing medical equipment?

The answer is no. All 50 states already have laws under which they can prosecute the misconduct covered in the SAFE DOSES Act. In fact, the federal government does, too.

As the Heritage piece alludes to (but does not outright say), the SAFE DOSES Act is deficit neutral and thus provides Congress with an opportunity to pass *something* during these budget-strapped times. It also gives congressmen the chance to pose as tough on crime. The losers are average citizens, facing the Leviathan that is our criminal code.