

## Terror Law's Long Reach Challenged

*Latest Front in Campaign Against Federalization of Crime Is a Statute Enacted as Part of a Chemical-Weapons Treaty*

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If Hessam Ghane wanted to kill himself with a gun, he likely wouldn't have run afoul of the federal government. But when he talked of using cyanide, he wound up with an eight-year federal prison sentence.

The 62-year-old Missouri chemist violated a rarely used federal law passed in 1998 as part of a chemical-weapons treaty. Under the law, it can be a crime to possess a vast range of toxic chemicals, including common household cleaners, that can harm people or animals. It exempts "peaceful" uses, such as cleaning a kitchen with ammonia, but pouring it into a goldfish tank could result in a prison term, legal experts say.



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Paul Clement, second from right, says his client should have been subject to state rather than federal law.

In March, a federal appeals court in St. Louis upheld Dr. Ghane's conviction, though it said applying the chemical-weapons law to a contemplated suicide might be considered a "close call."

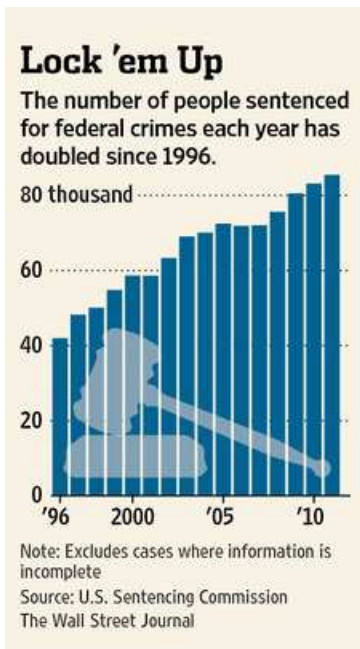
The law is now a front in a war over the reach of federal criminal law. Critics from across the political spectrum argue that Congress has passed so many criminal statutes that it has become too easy for the average citizen to unknowingly run afoul of them.

The chemical-weapons law "is one of the many, many examples of the over-federalization of criminal law," said Ilya Shapiro, a senior fellow at the libertarian Cato Institute. Ostensibly aimed at terrorists, it has been so broadly interpreted that prosecutors could "go after anybody who buys anything with chemical content at the local drug store," he said.

A Justice Department spokesman contended prosecutions using the law have been infrequent.

J. Justin Johnston, an attorney for Dr. Ghane, said there would be a further appeal. The law is also being challenged in a federal appeals court by Carol Bond, a Pennsylvania woman who received a six-year federal sentence for attempting to harm a woman who had an affair with her husband. Ms. Bond has admitted to spreading toxic chemicals on the woman's mailbox, car door and front door, according to court records. The victim suffered a burn on one thumb.

Ms. Bond's legal team—headed by Paul Clement, the former solicitor general under George W. Bush who recently argued against the Obama health-care law in the Supreme Court—contend that her misdeeds should have been left to state authorities, which would have resulted in a lesser sentence. Her prosecution, they argue, violates the Tenth Amendment, which reserves for the states or the people powers not expressly given to the federal government. The law "threatens to turn countless household chemicals into 'chemical weapons,' " and represents "the disturbing trend of over-federalizing crime," argued a Bond court filing.



The statute is perfectly legal under Congress's power to regulate commerce and enter into treaties, countered a U.S. filing. It said the law's language "leaves no room for doubt" that Congress intended the statute to cover a range of activities, including "an individual bent on vengeance."

Last year, the Supreme Court unanimously overturned an appeals-court decision. It said Ms. Bond had standing to challenge the law under the Tenth Amendment and noted that "an individual has a direct interest in objecting to laws that upset the constitutional balance." The high court sent the case back to the appeals court to determine if Ms. Bond had been improperly prosecuted under the law. The appeals-court ruling is pending.

Robert Goldman, an attorney for Ms. Bond, declined to comment, as did a Justice Department spokesman.

In another case, a Tucson, Ariz., man accused of creating a football-field-sized cloud of chlorine gas that forced evacuations of a neighborhood is challenging federal jurisdiction, arguing it should be a state matter. He has pleaded not guilty.

The problems for Dr. Ghane, the chemist, began when he went to an emergency room in 2003. Besides talking about killing himself with cyanide he had at home, he said he had thoughts of harming unnamed government officials. He didn't act on either

thought and later testified he would never hurt anyone beside himself. In the hospital, he gave police permission to search his apartment, where they retrieved the poison.

Rather than leaving Dr. Ghane—who the appeals court said had a "history of significant mental illness"—to treatment in the civil psychiatric system, prosecutors indicted him. After his first trial ended in a hung jury, Dr. Ghane was convicted in late 2010.

In an appellate brief challenging the conviction, Dr. Ghane's lawyers argued that the statute is "unconstitutionally vague and overbroad," giving the government "almost limitless discretion to hand pick" activities to prosecute. A government filing said the law is sufficiently specific to bar possessing cyanide to possibly harm anyone, including oneself. It added that a suicide with cyanide could endanger Dr. Ghane's neighbors and emergency responders.

Dr. Ghane was in federal custody for about seven years during court battles over his mental competence to stand trial. He is now on probation.