



[Comments](#) 0 | [Recommend](#) 1

Brian W. Walsh: Criminalizing us all

05:57 PM CDT on Friday, October 2, 2009

"You don't need to know. You can't know."

That's what Kathy Norris, a 60-year-old grandmother of eight, was told in October 2003 when she asked court officials why federal agents had subjected her home to a furious search. The agents who ransacked the Norrises' longtime home in Spring, Texas, answered no questions while they emptied file cabinets, pulled books off shelves, rifled through drawers and closets, and threw their contents on the floor. The six SWAT-clad agents carrying weapons were with – get this – the U.S. Fish and Wildlife Service.

Kathy and George Norris lived under the specter of a covert government investigation for almost six months before the government unsealed a secret indictment and revealed why the Fish and Wildlife Service had treated the Norrises' family home as if it were a training base for suspected terrorists.

Orchids. That's right. Orchids.

By March 2004, federal prosecutors were well on their way to turning 66-year-old retiree George Norris into an inmate in a federal penitentiary – based on his home-based business cultivating, importing and selling orchids. Kathy Norris testified before the House Crime Subcommittee this summer.

The topic: the rapid and dangerous expansion of federal criminal law, an expansion that is often unprincipled and highly partisan.

Chairman Bobby Scott, D-Va., and ranking member [Louie Gohmert](#), R-Texas, conducted a truly bipartisan hearing (a rarity this year). These two leaders have begun giving voice to the increasing number of experts worried about "overcriminalization." Astronomical numbers of federal criminal laws lack specifics, can apply to almost anyone and fail to protect innocents by requiring substantial proof that an accused person acted with actual criminal intent.

George Norris ended up spending almost two years in prison because he lacked the proper paperwork for some of the orchids he imported. The orchids themselves were all legal. But George and the overseas shippers who packaged the flowers failed to properly navigate the many, often irrational, paperwork requirements the United States imposed when it implemented an arcane international treaty's new restrictions on trade in flowers and other flora.

Krister Evertson, another victim of overcriminalization, told Congress, "What I have experienced in these past years is something that should scare you and all Americans."

He's right.

Krister, a small-time entrepreneur and inventor, faced two separate federal prosecutions stemming from his work trying to develop clean-energy fuel cells. The feds prosecuted Krister the first time for failing to put a

federally mandated sticker on an otherwise lawful UPS package in which he shipped some of his supplies. A jury acquitted him, so the feds brought new charges. This time they alleged he technically "abandoned" his fuel-cell materials – something he had no intention of doing – while defending himself against the first charges. Krister, too, spent almost two years in federal prison.

As [George Washington University](#) law professor Stephen Saltzburg testified at this summer's hearing, cases like these "illustrate about as well as you can illustrate the overreach of federal criminal law."

The Cato Institute's Timothy Lynch called for "a clean line between lawful conduct and unlawful conduct."

Former U.S. Attorney General Richard Thornburgh captured the essence of the problems that worry so many criminal-law experts: "Those of us concerned about this subject share a common goal – to have criminal statutes that punish actual criminal acts and do not seek to criminalize conduct that is better dealt with by the seeking of regulatory and civil remedies."

The Norrises' nightmare didn't end until George was released from federal supervision in December 2008. Kathy testified, however, that even after he came home, the man she married was gone. George was then 71. Serving two years as a federal convict – then years more defending unsuccessfully against the charges – took a severe toll on him mentally, emotionally and physically.

These are repressive consequences for an elderly man who made mistakes in a small business. The feds should be ashamed, and Krister Evertson is right that everyone else should be scared. Far too many federal laws are far too broad.

Reps. Scott and Gohmert have set the stage for more hearings on why this places far too many Americans at risk of unjust punishment. Members of both parties should follow their lead.

Brian W. Walsh is senior legal research fellow in the Center for Legal and Judicial Studies at The [Heritage Foundation](#). Readers may contact him through www.heritage.org.