

*Congressional Testimony*

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**The Overcriminalization of Conduct:  
Consequences for an American Inventor**

**Testimony Before  
Subcommittee on Crime,  
Terrorism and Homeland Security,  
Committee on the Judiciary,  
United States House of Representatives**

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Chairman Scott and Ranking Member Gohmert, thank you for holding this hearing on this very important topic. I only wish that you had held it five years ago, before I became a victim of overcriminalization. What I have experienced over these last five years is something that should frighten this subcommittee, Congress, and all Americans. Ordinary citizens, even people trying to do good, are at great risk of criminal prosecution, conviction, and imprisonment.

I know this first-hand, because it happened to me. I have stuttered all my life, but the experiences I want to share are greater than my desire not to talk publicly. I hope that my story helps you to understand the severe consequences of criminalizing ordinary, unobjectionable conduct.

First, some background: I have always strived to be an upright, law-abiding citizen of this beautiful and great land. I am an Eagle Scout. I am a member of the National Honor Society. I served a two-year mission for my church in California and Indiana serving the deaf and the hearing. I helped open the Indiana Mission for the deaf. Until 2004, I had had no brushes with the law and no criminal record. My total experience with law-enforcement was one or two parking tickets—probably less than most people.

I have had an interest in science all my life, and particularly chemistry. When I was just six-years-old, I was already tinkering and sketching out inventions. Soon I was able to build them.

I dove into science and inventing because I was interested and because I had the aptitude for it. My blessed mother taught me to never waste anything, not even my food, and so I didn't. If I was good at science, then that is what I would do.

As a teenager, I entered the Hawaiian Science Fairs held at my high school every year. For three years in a row, my experiments took first place. In 1971, when I was still in high school, I won third place in the Hawaiian State Science Fair, going up against students from all over the state. My entry to the statewide fair was called “The Electrochemical Oxidation of Bacterially Produced Formic Acid.” In layman's terms, it was a fuel-cell battery powered with coconut milk. My thought was that, in the unlikely event of being shipwrecked on a deserted island (and there are a few near Hawaii), a person could use wild coconuts to power a simple radio and listen to the news back home.

Although that may sound fantastical, the science was actually quite advanced for the day. This was during the infancy of fuel cells, when not many people were working on them and they had found few applications. In recent years, of course, all that has changed.

Because of my coconut-milk fuel cell, I was named “Citizen of the Day” by a local Oahu radio station. I won a trip on a nuclear submarine in Pearl Harbor. Not only did I enjoy my experimenting, but I also learned that others were interested in my work and that it could have real benefits.

With a 4.0 GPA and many advanced credits, I had the opportunity to skip the 12th grade and attend the University of Hawaii. Later, I enrolled at Brigham Young University. Throughout, I continued my tinkering and inventing.

And I kept an eye on fuel-cell technology. In the 1990s, the federal government began a big push to jumpstart the “hydrogen economy,” in which gasoline would gradually be replaced by hydrogen, which is clean, safe, inexpensive, and plentiful. Lots of money was going into the field, but progress was slow because manufacturers just couldn’t bring down the price of making the fuel cells.

In 1996, I had the idea of inventing a better process to produce a chemical called sodium borohydride to power hydrogen fuel cells. Sodium borohydride is an especially good choice for fuel cells because it is safe and produces no harmful emissions when used. Specifically, this chemical could avoid the need to use pressurized (at 3,000 p.s.i) or liquefied (at -200°C) hydrogen, either of which can be explosive. Sodium borohydride dissolves easily in water and gives off only pure, drinkable water. The only problem, for the time being, is that this chemical is expensive. My idea was to create a process to make it cheaper and speed the way to an environmentally-friendly hydrogen economy.

Like an old-time inventor, I patiently worked on my invention for many winters in my mother’s garage. It was my American dream, the idea that an individual could tinker in the garage, work hard, and come up with the next big invention to help humanity.

From the garage, I graduated to a larger space. In 2000, with some investment money from family, I was able to purchase the equipment to build out my process and refine it. We named the company SBH, for sodium borohydride. We were going to do good and, if we got it right, build a strong business.

But before I could finish developing the process, the money ran out. So I did what I had done before for money: join my mother in Alaska and mine for gold. When I had earned enough money, I thought, I would return to Idaho and resume work on my invention. In the meantime, I carefully packed up all the chemicals and equipment in stainless steel tanks, which were sealed shut to prevent any accidents. A friend offered to store the tanks at his company lot; I paid him for the trouble and told him that I would return when I had enough money to get back to business.

That plan fell apart on May 27, 2004. That is when my American dream turned into a nightmare, one that continues to this day.

On that day, my life became surreal, the kind of thing that only happens in the movies. Two black SUVs ran my car off the road as I made the trip to the local dump. Federal agents spilled out and pointed their weapons at me. I was arrested, then I was interrogated, and then I was thrown into jail.

For months, I was in a daze. It was like being sucked into a rabbit hole of contradictions and injustice. I remember thinking that this is how the fictional Alice must have felt when she fell into the rabbit hole—up was down, right was wrong. Nothing was like it appears or should be. I desperately wanted out of this hole. I did not want to be Alice.

But it didn't stop. 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 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.

My ordeal, it turned out, was nowhere near over.

I made a mistake that day that the agents arrested me in 2004: I told the truth. They wanted to know my source for the sodium—which, incidentally, is perfectly legal to possess—and I told them about my business and our plans to revolutionize the fuel-cell industry. But all they heard, it turned out, was that I had *even more* chemicals in storage.

Armed with that information, the Environmental Protection Agency swooped into the lot where the chemicals and equipment from my business had been stored. EPA agents cut open the tanks, declared everything inside—all my valuable supplies—to be toxic waste, and disposed of it all. In all, the EPA spent \$430,000 destroying my life's work.

Meanwhile, while all this was happening, I was in jail on the box-label charge. Nobody told me about what was happening at the time; they just went ahead and did it. Nobody asked me what was in the tanks or if I wanted my supplies and equipment.

After I was acquitted in Alaska, federal prosecutors filed new charges against me, for transporting my materials the half-mile to their storage space and improperly disposing of hazardous waste.

Let me make a point here: My chemicals and equipment were not hazardous and they were not waste. Far from being hazardous, everything was sealed tight in tanks. Nothing leaked, and the government never even claimed that a single person was put in harm's way by my materials. Nor was the environment ever at risk of any harm or damage.

And far from being waste, the materials were quite valuable. Most of the materials needed to make the sodium borohydride were brand new, unopened, and on pallets. There were also three brand new trailers, supplies of borax and mineral oil, some sodium hydroxide, and several stainless steel mixer tanks that were built specially for my process. Over \$100,000 was invested in this "waste."

So I had simply done what any responsible businessman who had suffered a setback might do:

Put everything safely on ice and earn some more capital in the meantime. Except I was being prosecuted for it.

According to the EPA, all this stuff was hazardous waste because...the EPA said so. The agency said that the materials were hazardous because some of the chemicals, just like many of the chemicals in high school labs, were caustic. And they were waste because I had abandoned them, even though I hadn't done any such thing. Finally, I didn't have the proper permits for handling hazardous waste. This put me in violation of a federal law called the Resource Conservation and Recovery Act (RCRA), which has civil and criminal penalties.

Again, rather than fine me, the federal government chose to prosecute.

I felt helpless. I had nowhere to turn. I was an ordinary American citizen with ordinary resources. The agencies involved were purely adversarial. I could not talk with them, and it probably wasn't safe to, anyway—they would use any slip against me. An inventor—someone with a good idea that needs some time and hard work to grow—doesn't stand a chance going up against the government.

But I didn't give in and didn't plead guilty, because I was not guilty and because the materials weren't abandoned or waste in the first place. But the trial judge said the government didn't have to prove to the jury that my materials were "hazardous waste," only that the EPA classified them that way. So the jury never got to rule on whether I had actually abandoned anything or whether my valuable materials were even waste. No surprise, without my strongest defenses, I was convicted.

Think about that: All the government has to do is declare some chemicals—perhaps antifreeze or old paint in your garage—to be hazardous waste, and then there's nothing you can do to defend yourself.

On January 23, 2008, I reported to the Sheridan Prison Camp in Idaho to serve my sentence. And now I am under the jurisdiction of a halfway house, for about another 10 days.

I will be a felon, however, for the rest of my life. Unless the Supreme Court takes my case, which I'm told is unlikely, I will not regain my rights to vote, to serve on a jury, to own firearms, and so many others.

This is not how criminal justice is supposed to work in the land of the free. I felt the injustice of being treated by the EPA as being guilty before being proved innocent. As a child, I was taught that it was the other way around. Even now that I'm out of prison, I feel that I've lost some of the freedoms that I once thought I had. It is very sobering and outright scary.

The criminal law has become a trap for the unwary, people just like me who become ensnared in vague and overbroad criminal laws. I was working on a hydrogen fuel cell invention, trying to improve the environment and the world. I was an American inventor. And for pursuing my dream, I wound up in prison.

If I had chosen to watch TV on a couch instead, I would never have experienced this ordeal.

What can Congress do? To prevent what happened to me from happening to other people, Congress should fix RCRA to require that waste actually be waste—that is, worthless material that a person intended to throw away.

But the problem isn't just RCRA. It's all these laws that put ordinary, well-meaning Americans at risk of criminal prosecution and conviction.

My story proves that these things can happen to any person, no matter the good deeds he's done, no matter his intentions, and no matter his law-abiding nature.

That isn't the way that it's supposed to be.

An old saying comes to mind: "One man's trash is another man's treasure." I had treasure, the EPA said it was trash. And so I lost my treasure. And that is why I am testifying today. Please protect our treasure. We worked so hard for it.