

## Commentary

Quin Hillyer: Regulatory police state grows

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### WASHINGTON -

One reason federal regulatory agents are sometimes called “jack-booted thugs” is that they can behave thuggishly. Equally abusively, federal prosecutors on twisted power trips too often support such thuggishness.

The results can be devastating for individual lives, including those of entirely innocent people. Regulatory thuggery doesn't help the economy, either. In far more restrained language, that's the basic message from a report released this month by the [Washington Legal Foundation](#), a nonpartisan legal advocate for free enterprise.

Titled “Special Report: Federal Erosion of Business Civil Liberties,” the meticulously researched publication tells multiple horror stories of regulatory and prosecutorial zeal run amok. As former [U.S. Attorney General Dick Thornburgh](#) wrote in an introduction to the report, “the EPA [[Environmental Protection Agency](#)] and DOJ [[Department of Justice](#)] have often resorted to criminal prosecution of minor regulatory offenses when administrative and civil remedies would be more appropriate.” And sometimes they do it while flagrantly violating all norms of reasonable behavior.

Consider the case of [James Knott](#), owner of a small [Massachusetts](#) niche manufacturer that won awards specifically for developing pollution control technology. In November of 1997, a “SWAT team” of 21 EPA agents, many of them armed, swooped in on the company's facility to conduct pH samplings of rinse water discharged into a public sewer.

A year later, the [U.S.](#) attorney indicted Knott on two felony counts because a small volume of the rinse water supposedly was too “acidic” to meet regulations. No actual environmental harm was alleged, but the prosecution went forward anyway.

Only during pretrial discovery did Knott's attorneys find that the original agent's reading showed the water to have a neutral pH, rather than an acidic one, but that the report had been “marked over” to change the numerical reading.

The charges were dropped, but not before Knott lost hundreds of thousands of dollars in legal fees. The judge, by the way, admonished the EPA for an “unconstitutional search of the plant.”

Then there was the 1999 [North Carolina](#) case where 34 armed EPA agents joined police officers in helmets and body armor to raid a small metal-stamping plant, also concerning “discharge” issues.

When the owner “tried to retrieve his tape recorder to record the event, he was threatened by EPA agents who drew weapons and placed him in handcuffs.” No charges were filed then, but the EPA continued to harass the owner for four more years until finally abandoning all proceedings against him.

The worst case, though, was surely *United States v. McNab*, in which seafood importers are still serving eight-year U.S. prison terms for the “crime” of bringing frozen lobster tails from [Honduras](#) in plastic bags instead of cardboard boxes, supposedly in violation of Honduran law made applicable to the U.S. traders under an American law called the Lacey Act.

Even after the Honduran attorney general informed U.S. courts that the obscure Honduran regulation had been repealed, the convictions were allowed to stand. Even if the Honduran regulation were valid, it was clearly abusive for the offense to be prosecuted as a criminal violation rather than as a merely administrative or civil matter.

The [Washington Legal Foundation](#) highlighted numerous other examples of prosecutors turning inadvertent administrative infractions into criminal cases, and of indicting entire companies even though only a few individuals were guilty of wrongdoing.

The most obvious example, of course, was the utter destruction of the [Arthur Andersen](#) accounting firm, where 28,000 workers lost their jobs due to the malfeasance of a few — and where, after the company already had folded, the Supreme Court unanimously threw out the corporation's conviction.

Many other times, agencies or prosecutors conflate civil and criminal investigations, deliberately using civil investigations (where some Fifth Amendment protections are not applicable) to develop evidence then used in criminal court. There are even instances of people self-reporting unintentional violation of some obscure regulation and then being tried criminally for their accidental transgression.

"There is no question about it: The pendulum has shifted so far ... that we have very serious problems with the prosecutorial function," Joseph DiGenova, former U.S. attorney for the [District of Columbia](#), told The Examiner. "Justice has aggrandized power to itself to a very dangerous extent.

"I think the [Washington Legal Foundation](#) report is right on the money," DiGenova added. "It really is a clarion call for Congress itself and for attorneys to be concerned."

I would go further. Agents and prosecutors who are so abusive not only should not be cuffing others, but should be in handcuffs themselves.

*Examiner*