

Legal Memorandum

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The Unlikely Orchid Smuggler: A Case Study in Overcriminalization

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George Norris, an elderly retiree, had turned his orchid hobby into a part-time business run from the greenhouse in back of his home. He would import orchids from abroad—South Africa, Brazil, Peru—and resell them at plant shows and to local enthusiasts. He never made more than a few thousand dollars a year from his orchid business, but it kept him engaged and provided a little extra money—an especially important thing as his wife, Kathy, neared retirement from her job managing a local mediation clinic.

Their life would take a turn for the worse on the bright fall morning of October 28, 2003, when federal agents, clad in protective Kevlar and bearing guns, raided his home, seizing his belongings and setting the gears in motion for a federal prosecution and jail time.

The Raid

Around 10:00 a.m., three pick-up trucks turned off a shady cul-de-sac in Spring, Texas, far in Houston's northern suburbs, and into the driveway of Norris's single-story home. Six agents emerged, clad in dark body armor and bearing sidearms. Two circled around to the rear of the house, where there is a small yard and a ramshackle greenhouse. One, Special Agent Jeff Odom of the U.S. Fish and Wildlife Service, approached the door and knocked; his companions held back, watching Odom for the signal.

Norris, who had seen the officers arrive and surround his house, answered the knock at the door with trepidation. Odom was matter-of-fact. Within

Talking Points

- Federal endangered species laws are a trap for the unwary, combining vague and open-ended offenses (defined in part by international law) with harsh criminal penalties.
- In 2003, that trap ensnared George Norris, an elderly orchid enthusiast who had turned his hobby into a small business. Federal agents bearing weapons raided his home and carried off 37 boxes of business records and his computer.
- Norris was ultimately prosecuted for a common paperwork violation: He had imported some orchids that were improperly labeled. Unable to pay for attorneys after his and his wife's life savings ran out in the early stages of the case, Norris pleaded guilty and was sentenced to 17 months in federal prison.
- Norris's case is not an aberration. Many small business owners struggle to comply with enormously complex regulatory regimes, knowing that a single error could land them in jail.

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10 seconds, he had identified himself, stated that he was executing a search warrant, and waved in the rest of the entry team for a sweep of the premises. Norris was ordered to sit at his kitchen table and to remain there until told otherwise. One agent was stationed in the kitchen with him.

As Norris looked on, the agents ransacked his home. They pulled out drawers and dumped the contents on the floor, emptied file cabinets, rifled through dresser drawers and closets, and pulled books off of their shelves.

When Norris asked one agent why his home was the subject of a warrant, the agent read him his Miranda rights and told him simply that he was not charged with anything at this time or under arrest. Norris asked more questions—What were they searching for? What law did they think had been broken? What were their names and badge numbers?—but the agents refused to answer anything. Finally, they handed over the search warrant, but they would not let Norris get up to retrieve his reading glasses from his office; only an agent could do that.

It was as if he were under arrest, but in his own home.

Attached to the warrant was an excerpt of an e-mail message, from two years earlier, in which a man named Arturo offered to have his mother “smuggle” orchids from Ecuador in a suitcase and send them to Norris from Miami. Norris remembered the exchange; he had declined the offer and had stated that he could not accept any plants that were not accompanied by legal documentation.

The agents questioned Norris about the orchids in his greenhouse, asking which were nursery-grown and which were collected from the wild. Norris explained that nearly all of them had been artificially propagated; one agent, knowing little about orchids, asked whether this meant they had been grown from seeds.

The agents boxed and carried out to their trucks nearly all of Norris’s business records, his computer, his floppy disks and CD-ROMs, and even installation discs, and left him a receipt for the 37 boxes that they took. Then they left. Norris surveyed the rooms of his home. In his tiny office,

papers, old photographs, and trash were strewn on the floor. Everything was out of place.

His wife arrived home shortly after the agents left. She had panicked when, calling home to talk to her husband, an agent picked up the phone and refused to put him on or answer any questions. It took the two of them hours to clean up the house and try to assess the damage.

A Passion Blossoms

George Norris, now 71 and arthritic, carries his large frame wearily. His gestures are careful, as if held back by pain or fear, and his stride slow and deliberate. And his voice, once booming, is now softer and tentative. Visibly, he is a man who has been permanently scarred by experience.

Yet his mood and movements become animated when he discusses the birth of his passion for orchids. His first was a gift, twice over: A neighbor had received the blooming plant, straight from the store, for Mother’s Day, and she gave it to Norris after the flowers faded. At the time, he had a small lean-to greenhouse and dabbled in horticulture. He put it there and forgot about it. A year later, as he was doing the morning watering, his eyes were drawn to two stunning yellow flowers on stems shooting out of the plant. They were prettier than any other flowers he had ever seen.

He dove into the world of orchids with an unusual passion, reading everything he could find on the subject. One book extolled the diversity of species in Mexico. It was not so far from Houston, and his wife spoke fluent Spanish, so they planned an orchid-hunting trip. In every small town, the locals would point them to unusual plants, often deep in the woods. Norris managed to collect 40 or 50 plants, and their beauty and diversity were stunning. He was hooked.

That was 1977, years before an orchid craze would hit the United States. All of a sudden, Norris found himself part of a small, close-knit community of orchid enthusiasts and explorers committed to finding and collecting the unknown species of Asia, Africa, and South America. They communicated by newsletters and at regional orchid shows. While man had thoroughly covered and mapped the terrain of the world, the world of orchids was

still frontier, with exotic specimens being discovered regularly.

Within a few years, orchids were taking up more and more of Norris's time and attention, and he had become dissatisfied with his work in the construction field. So he quit work and set off to see if he could make a living as a full-time explorer, finding orchids in the wild and introducing them to serious collectors in the U.S.

His new business was not initially a success. It took years to build up a mailing list of customers and credibility in the field. By the mid-1980s, he was beyond the break-even point, and from there, business kept growing. In 2003, revenues topped \$200,000—a huge sum considering that most plants sold for less than \$15.

Norris, meanwhile, was gaining prominence. Through word of mouth, and after seeing his orchids in collections, more and more enthusiasts wanted to be on his mailing list, and he began using his catalogue as a platform for his views on orchids, the orchid community, and even politics. Orchid clubs all around the South invited him to deliver talks and slideshows.

Norris made a name for himself as one of the few dealers importing non-hybrid plants, known as “species” orchids. He got commissions from botany departments at several universities that needed non-hybrid plants for their research, from botanical gardens, and from the Bronx Zoo when it needed native orchids to recreate a gorilla habitat. Years later, some of those orchids are still a part of the zoo's Congo Gorilla Forest.

Norris's work took him to Costa Rica, Peru, Ecuador, Mexico, and other countries where exotic species grew wild. On each trip, he tried to meet local collectors and growers, contacts who could lead him to the best plants. Some of these, in later years, would become his chief suppliers.

Rules at the time were lax. In Mexico, Norris explained, “You could collect as many as you wanted” and get permits for them all. And with that paperwork, importing them into the U.S. was a breeze.

As orchids became more popular, however, that would change.

“The Regulation Is Out of Hand”

Passion for the flower is not enough today to succeed in the orchid business. Moving beyond the standard hybrids sold at big-box stores requires either gaining a detailed knowledge of several complicated bodies of law or hiring attorneys. This is a necessity because not only is the law complicated, but the penalties for getting anything wrong are severe: fines, forfeiture, and potentially years in prison.

Trade in orchids is regulated chiefly by the Convention on International Trade in Endangered Species (CITES), an international treaty that has been ratified by about 175 nations. Though initially conceived to protect endangered animals, the subject matter was expanded to include flora as well.

CITES classifies species, and the limitations on their trade, in three appendices.

- Appendix I species are the most in danger of extinction; importing or exporting them from any CITES country is prohibited, except for research purposes.
- The species listed in Appendix II are less endangered and can be traded so long as they are accompanied by permits issued by the exporting country.
- Appendix III species are listed by individual countries and are subject to the permit requirement only when they originate in the listing country.

Determining the listing of a plant is not always an easy task. Some species of orchids are listed in Appendix I, and so cannot be traded, and Appendix II covers the remainder. Exporters, however, often have a tough time identifying plants, especially those collected from the wild. The result is rampant mislabeling of orchid species. Usually, this has few consequences, because permitting agencies and customs agents, who tend to focus on animals and invasive species, rarely have the expertise to recognize the often subtle differences between varieties of orchids, especially when they are not in bloom.

Making matters even more complicated, CITES contains a major exception to the tough restrictions of Article I. Article I plants that are artificially propagated are deemed to be covered by Article II and

so may be traded. But artificial propagation is not simply a matter of ripping a plant from the wild and breeding it in a nursery. To take advantage of the exception, nurseries must be registered with CITES and obtain a permit from their government to remove a small number of plants from the wild for the purpose of propagation. Then there is the difficulty—and often impossibility—of distinguishing Article I plants raised in nurseries from those collected from the wild.

Countries that have joined CITES agree to enforce its requirements within their laws. This means establishing agencies to research domestic wildlife and, when appropriate, grant permits. It also requires close monitoring of imports and exports to ensure that no Appendix I species are traded and that shipments of species listed in Appendix II and Appendix III are properly permitted. While the treaty requires countries to “penalize” improper imports and exports, it does not require any specific penalties; that is left up to each country’s lawmakers.

In the United States, CITES is implemented through both the Lacey Act, a 1900 wildlife protection act that was amended in 1981 to protect CITES-listed species, and the Endangered Species Act (ESA). Both, in their original forms, covered only animals; plants were added later and made subject to the same restrictions as animals. Taken together, these laws prohibit trade in any plants in violation of CITES, as well as possession of plants that have been traded in violation of CITES.

More specifically, federal regulations lay out the requirements for importing plants. Every plant must be accompanied by a tag or document identifying its genus and species, its origin, the name and address of its owner, the name and address of its recipient, and a description of any accompanying documentation required for its trade, such as a CITES permit. The importer is required to notify the government upon the arrival of a shipment. After that, the plants are inspected by the Animal and Plant Inspection Service, a division of the U.S. Department of Agriculture, which checks for possible infestations, banned invasive species, and proper documentation. Any red flags can cause a shipment to be turned back at the port of entry.

Violations also carry severe penalties. Under the ESA, “knowing” violations—that is, ones in which the dealer knew the basic facts of the offense, such as what kind of plant was being imported or that the CITES permit did not match the plant, though not the legal status of the plant, such as whether it was legal to import—can be punished by civil fines of up to \$25,000 for each violation, criminal fines of up to \$50,000, and imprisonment. The same conduct can also be punished under the Lacey Act, which allows civil penalties of up to \$10,000 for each violation, criminal fines of up to \$20,000, and imprisonment of up to five years.

Importers also face possible legal penalties under more general federal statutes, such as those prohibiting false or misleading statements to government officials (imprisonment of up to five years); the mail fraud statute (20 years); the wire fraud statute (20 years); and the conspiracy statute (five years).

The result is that minor offenses, such as incorrect documentation for a few plants, are treated the same as the smuggling of endangered animals and can lead to penalties far more severe than those regularly imposed for violent crimes and dealing drugs. Because this legal risk is so great, many orchid dealers have stopped importing foreign plants—even those that can be traded legally—while others have sharply curtailed their imports.

Perversely, the result of this drop in legal imports has been a blossoming in black-market orchids, illegally imported into the country and commanding large premiums due to their rarity and allure. Meanwhile, those who continue to import plants through the proper channels, even if they do so with great care and top-notch legal advice, know that they could be ruined at any time by so much as a single slipup. As one academic ecologist put it, “The regulation is out of hand.”

Worse than that, it’s ineffective. “Habitat destruction poses much more of a threat to [the] survival” of orchid species than collection and trade do, concludes a recent survey of the ecology literature. In Singapore, for example, clearance of old-growth forest caused the extinction of 98 percent of orchid species versus 26 percent of other plants. While there are several examples of collection dealing the

final blow to a vulnerable species—for example, the Vietnamese Lady Slipper—the vulnerability in each instance was due to development, particularly rain forest clearance.

CITES strictly regulates trade in orchids but does nothing to address this greater threat. Indeed, some argue that CITES has not protected a single species of orchid from extinction.

It may even have pushed a number of species into extinction. Orchid growers frequently complain that the treaty's restrictions on collection from the wild restrict preservation efforts in the face of habitat destruction. Under CITES, it is illegal to collect wild orchids for artificial propagation without a permit, but obtaining a permit can take months if it can be had at all. By that time, the point may be moot: The habitat has already been destroyed. And when collection is allowed, it is highly regulated and usually limited to just a few plants. If those plants cannot be propagated, there is no second chance; even if another specimen exists, if it was not legally collected, neither are its offspring.

Further, there is evidence that regulation has served to increase wild collection and smuggling of rare species. Trade in *Phragmipediums* surged in advance of their Appendix I listing, leading to the loss of several species. After the listing went into effect, black-market prices rose for many species, increasing incentives for smugglers. Growers, meanwhile, struggled to collect species from the wild legally for propagation. In this way, CITES benefits poachers while putting hurdles in the path of legitimate, conservation-minded collectors.

The other group that benefits are the large orchid growers of Germany and the Netherlands, which supply the bulk of the world market. The Dutch, in particular, lobbied for the inclusion of *Phrags* in Article I, despite little evidence that *Phrags* were more endangered than other orchids, on the grounds that they were difficult to distinguish from plants from the unrelated *Paphiopedilum* family. The listing stifled growing competition with European growers in the potted-plant market from lower-cost producers in South America. The respite, however, lasted only a few years—the time

it took for dealers to cultivate ties with growers in Southeast Asia, whose output multiplied, and push prices down.

The fundamental problem may be that CITES is simply a poor fit for plants. As originally conceived, the treaty was intended to cover only endangered animals; plants were added toward the end of negotiations. The amendment was crude, doing little more than replacing “animals” in every instance with “animals or plants.” An orchid picked from the wild, which could produce a thousand seedlings in short order, is subject to the same regulation as an elephant, a female of which species will produce fewer than 10 offspring in its decades-long lifespan. And by extension, that orchid and elephant are subject to the same means of criminal enforcement in the United States.

The difference, needless to say, is that elephant poaching may lead to that species' extinction, while picking the orchid will more likely lead to its species' preservation in the face of widespread habitat destruction. It is truly a perverse result that furthering the ends of CITES and U.S. environmental law carries the same massive penalties as frustrating them.

Business as Usual

George Norris was among that group of legal importers, counting on his common sense and understanding of orchids to see him through any legal risks. That would be his downfall.

Over the years, he had built relationships with orchid gatherers and growers around the world, and many became his suppliers. He worked the most with Manuel Arias Silva, who operated several nurseries in Peru and was known for cultivating the toughest species from the wild that few others could persuade to grow.

Norris had met Arias in the late 1980s, when Arias had just started his export business and was looking to build a customer base in the United States. The two hit it off immediately, and in 1988, Norris spent two weeks in Peru with Arias, collecting plants and surveying Arias's operations.

Their families also grew close. After meeting Arias's relations, Norris and his wife offered to take

in two of Arias's sons, Juan Alberto and Manolo, who were badly scarred about their hands and faces from a fire years earlier, and to arrange plastic surgery for them. Kathy Norris persuaded a local hospital to donate its facilities, and Dr. David Netscher, a prominent surgeon and professor at the Baylor College of Medicine, agreed to do the work for \$1,500 per child, barely enough to cover his expenses.

In 1993 and 1994, first Manolo and then Juan Alberto spent six months with the Norrises undergoing surgery, follow-up care, and recuperation. After that experience, the Norrises and the Arias family were in regular contact, exchanging family photographs and visiting from time to time.

Norris had other suppliers. One was Raul Xix, a native Maya in Belize who supported his 11 children and wife through odd jobs: building homes, tapping chicle trees, and collecting orchids from the jungle. Norris had befriended Xix on a trip and encouraged him to try his hand at exporting plants, a potentially more lucrative and dependable source of income.

Xix, Norris soon learned, had no business experience, could barely read and write, and knew little about exotic orchids. He would ship boxes loaded with all manner of flora, some not even orchids and many infested with ants, and though bearing CITES permits from Belize, few plants were correctly identified—not that it ever mattered.

Norris, charmed by Xix and admiring his work ethic, decided that he would be a regular customer and use their interactions to teach Xix the ins and outs of the business. Keeping that commitment was a challenge: Xix's first few shipments were a total loss, and others were turned back at the port of entry because of poor packing and infestations. But slowly, Xix did become more reliable.

For Xix and Norris's other suppliers, paperwork was more of a hassle than growing or gathering orchids. In most developing nations, months pass between applying for and receiving a CITES permit. To compensate, orchid exporters request permits early, long before the plants are ready to sell. In that gap between applying for a permit and receiving it, some plants die and others thrive. Or a

big shipment comes in from the countryside. Or a new family or species comes into fashion overseas.

And then the permits arrive, and the plants are ready to ship. Because of the delay, only rarely does the permit perfectly match the merchandise. There are always at least a few discrepancies. Going strictly by the book would mean giving up the lucrative foreign markets that account for nearly all profits.

Importers face a similar dilemma. Fashionable plants come from foreign soil, and without imports, no boutique could attract collectors—that is, anyone willing to pay more than fifteen or twenty dollars for a flower.

In the 1990s, what these collectors wanted were *Phragmipediums*, better known as tropical lady slippers. *Phrags* became popular in the early 1990s after all of the species in the family were uplisted to CITES Article I, a move that many in the orchid business attribute to commercial rather than preservationist motives. Demand for the flowers surged.

Arias had been breeding *Phrags* for years from plants that he had legally taken from the wild. But in Peru, *Phrags* were common and almost worthless. So in 1998, he turned to the export market. It would be months or even years, Arias guessed, before he was approved to have all of them listed on his permits.

Arias began including *Phrags* in the price sheets that went to his best foreign customers. Norris ordered a few, along with hundreds of other plants. On the forms, they were described as *Maxillarias*, a type of orchid that Arias had cleared for export. Per usual industry practice, he received a separate letter matching the names on the permit with the plants' real identities.

Over time, Arias's nurseries received permits and CITES registration to grow many of the *Phrags* he had previously shipped under other names, and as that happened, he began labeling them properly in his shipments. But there were always at least a few in each shipment that were mislabeled because he had not yet received the proper permit.

But it was a flower that Norris never actually imported that would lead to the investigation and his arrest.

If there is a rock star of the orchid world, it is the *Phragmipedium kovachii*. James Michael Kovach discovered the flower while on an orchid-hunting trip to the Peruvian Andes in 2002 and sneaked it back into the United States without any CITES documentation to have it catalogued by Selby Botanical Gardens' Orchid Identification Center, a leader in identifying and publishing new species. Two Selby staff members, recognizing the importance of the discovery, rushed out a description of the new flower, christening it *kovachii*, after Kovach, and barely beating into print an article by Eric Christensen, a rival researcher who had been working from photos and measurements taken in Peru.

The most striking thing about the *kovachii* is its size. The plants grow thick leaves up to two feet in length. Flower stalks shoot up from the plant, rising two feet or more. But the real stunner is the flower: It is velvety, a rich pink-purple at the tips of its petals, brilliant white in the center. And the size! Some measure more than 10 inches across. The flower is a rare combination of grace and might, a giant unrivalled in its delicacy and elegance. Lee Moore, a well-known collector, dubbed it "the Holy Grail of orchids."

Pictures circulated on orchid mailing lists and discussion reached a fever pitch. "People decided they would become excited beyond all reason," said one orchid dealer. "Everyone wanted it. It was a meteoric plant." According to rumors, black-market specimens had sold for \$25,000 or more.

The orchid fever was only heightened by the legal drama that had engulfed Selby Gardens and Kovach as a result of the find. The Peruvian government caught wind of the frenzy over the flower and, irked that its country had lost out on the honor of identifying the plant, pressed U.S. authorities to investigate for CITES violations. Eventually, criminal charges were brought against Kovach, Selby Gardens, and its chief horticulturalist, Wesley Higgins. All pleaded guilty, receiving probation and small fines.

Right after he heard about the *kovachii*, Norris contacted Arias to press for information about the flower, especially when they would be available for

sale. With illegal trade in the flower already flourishing, Arias figured that he could get the right permits to collect a few from the wild for artificial propagation. Breeding the flower would not be easy—Phrags have a reputation for being difficult plants, and that is especially true of the rarer ones—but he had succeeded before with other tough plants and had a high-altitude greenhouse that would be perfect for the *kovachii*. Doing it legally could take a year or two, maybe even three.

Norris was more optimistic and ran with the information in his next catalog, boasting that he would have legal *kovachiis* for sale in a year, perhaps less—far sooner than anyone else thought possible. That caught the attention of an orchid researcher who had long believed that the U.S. orchid trade was overrun with illegal plants, threatening the survival of many species in the wild. Enforcement was a joke; there had been only one prosecution to date for dealing in illegal orchids. He decided to take a closer look at Norris's spring orchid specialties and brought Norris to the attention of the U.S. Fish and Wildlife Service.

Around that time, a new customer placed an order for four Phrags and specifically asked Norris to include the CITES permits for the flowers. It was an unusual request. Usually, the Department of Agriculture inspectors took the permits at the port of entry for their records. Except for the few times that shipping brokers made copies, Norris hardly ever received them with plant shipments. Assuming that the request was just a misunderstanding, he shipped the plants with a packing list but no permits.

Several days after the orchids were delivered, Norris received another e-mail from the buyer, asking again for the permits. The Department of Agriculture had them, Norris responded, but he would try to get a copy. That, thought Norris, was the end of the matter. The buyer made another order for more Phrags a year later and again asked for the permits. Once again, Norris shipped the flowers without them.

Unknown to Norris, the buyer in these transactions was working with Fish and Wildlife Service agents. Because of the controversy over the *kovachii*, the Service had a newfound interest in

orchids. A few prominent prosecutions would serve as a warning to the rest of the tight-knit orchid community.

That informant's two transactions with Norris would serve as the basis for the raid on Norris's home.

The Prosecution

The raid occurred in October 2003, but George Norris was uncertain of his fate for the next five months, receiving no communications from the government. On the advice of friends, he wrote a letter to the Miami-based prosecutor who was probably overseeing the case, explaining that he had never imported kovachiis—this was at the time that others were being charged for importing the flower—and asking for a meeting to answer any questions. At the very least, he asked, could the government tell him what he was suspected to have done? After a few weeks, his computer was returned, broken, and Norris resumed business as best he could, taking orders and showing off his plants at shows.

Meanwhile, Fish and Wildlife Service Agents were poring over the records retrieved from Norris's home, as well as others obtained from the Department of Agriculture. There was no evidence that Norris had ever obtained or sold a kovachii, but the agents did notice minor discrepancies in the documents. Some of the plants Norris had offered for sale were not listed on any CITES permits. Among those missing were three of the 10 Phrags in the informant's second order. The agents also found Norris's correspondence with Arias and Xix, which seemed to confirm their hunch: Norris had been engaged in a criminal conspiracy to skirt CITES and violate U.S. import laws.

Norris's business slowly recovered but suffered a devastating blow when Manuel Arias Silva was arrested in Miami one day before the Miami Orchid Show in March 2004. After that, everyone assumed that Norris would be next. Norris and his wife scrambled to sell Arias's flowers (mostly Phrags, by now properly permitted) at the show, earning just enough to pay his expenses and get him out of jail. With no one else to step in, they guaranteed Arias's \$25,000 bail and \$175,000 per-

sonal surety bond: He was now their responsibility. Rumors raged that Norris would be arrested on the floor of the show.

But it was another week before Norris was indicted. There were seven charges: one count of conspiracy to violate the Endangered Species Act, five counts of violating CITES requirements and the ESA, and one count of making a false statement to a government official, for mislabeling the orchids. Arias faced one additional false-statement charge.

On March 17, 2004, Norris and his wife flew to Miami, where he voluntarily surrendered to the U.S. marshals. The marshals put him in handcuffs and leg shackles and threw him in a holding cell with three other arrestees, one suspected of murder and two suspected of dealing drugs. Norris expected the worst when his cell mates asked him what he was in for. When he told them about his orchids, they burst into laughter. "What do you do with these things, smoke 'em?" asked one of the suspected drug dealers.

The next day, Norris pleaded not guilty, and a day after that, he was released on bail. The Norrises returned to Spring, Texas, to figure out their next steps. Their business was destroyed; their retirement savings and home were on the line for the Peruvian orchid dealer who was now living in the spare bedroom; and Norris, 67 and in frail health, faced the prospect of living out his days in a federal prison. Still, Norris believed he had not done anything wrong and would win out in the end.

So they made a go of fighting the charges. Norris hired an attorney who, with most of his experience at the state or county level, quickly found himself in over his head with the complexities of international treaties, environmental law, and the intricacies of a federal prosecution.

In April, the attorney accompanied Norris to what turned out to be a proffer meeting, at which defendants are typically offered the opportunity to cooperate with the government in exchange for leniency. Norris had not been told what to expect and did not have anything to say when prosecutors asked what he was willing to admit. They peppered him with names of other orchid dealers, but Norris

was not inclined to inform on them—not that he knew enough about their operations, in any case, to offer anything more than speculation.

After that, Norris got a more experienced—and much more expensive—attorney. With bills piling up and the complexity of the case and the resulting difficulty of mounting a defense finally becoming apparent, Norris took the step he had been dreading: changing his plea to guilty. “I hated that, I absolutely hated that,” said Norris. Five years after the fact, the episode still provokes pain, his face blushing and speech becoming softer. “The hardest thing I ever did was stand there and say I was guilty to all these things. I didn’t think I was guilty of any of them.”

While Norris and his wife were focused on his case, Manuel Arias Silva was plotting his own next moves. By mid-May, he had managed to obtain a new passport and exit visa from the Peruvian Consulate. On May 19, soon after they had returned to Texas from a hearing in Miami, Kathy Norris received a call from Juan Silva, in Peru, who was in tears. His father, he explained, had returned home to evade the charges against him in the United States. The Norrises would be on the hook for Arias’s bail and bond—nearly \$200,000.

Based on Norris’s transactions with Arias, as well as those with Xix, the government recommended a prison sentence of 33 to 41 months. Such a lengthy sentence was justified, according to the sentencing memorandum, because of the value of the plants in the improperly documented shipments. Two choices pushed the recommended sentence up.

First, the government used Norris’s catalog prices to calculate the value of the plants rather than what he had paid for them.

Second, it included all plants in each shipment in its calculations, reasoning that the properly documented plants—by far the bulk of every shipment—were a part of the offense because they were supposedly used to shield the others.

On October 6, Norris was sentenced to 17 months in prison, followed by two years of probation. In the eyes of the law, he was now a felon and would be for the rest of his life. The sentencing

judge suggested to Norris and his wife that good could come of his conviction and punishment:

Life sometimes presents us with lemons. Sometimes we grow the lemons ourselves. But as long as we are walking on the face of the earth, our responsibility is to take those lemons and use the gifts that God has given us to turn lemons into lemonade.

Norris reported to the federal prison in Fort Worth on January 10, 2005; was released for a year in December 2006 while the Eleventh Circuit Court of Appeals considered a challenge to his sentence; and then returned to prison to serve the remainder of his sentence. Prison officials, angered by Norris’s temporary reprieve, threw him in solitary confinement, where he spent a total of 71 days. He was released on April 27, 2007.

The Aftermath

George Norris has lost his passion for orchids. The yard behind their home is all dirt and grass, nothing more. The greenhouse is abandoned. Broken pots, bags of dirt, plastic bins, and other clutter spill off its shelves and onto the floor. The roof is sagging. A few potted cacti are the only living things inside it, aside from weeds.

A dozen potted plants grace the Norrises’ back porch; three or four are even orchids, though none are in bloom. Kathy waters them. “They’re the ones I haven’t managed to kill yet,” she says.

The couple’s finances are precarious. Following the flood of 1994, Norris rebuilt most of their home himself, but they had to refinance the house to pay for materials. Kathy had to make those payments and all the others while Norris was in prison, relying on her salary as director of Montgomery County’s Dispute Resolution Center, which she ran on a shoestring budget. The same discipline now reigns at home. “I figured out how to live on as little as it’s possible to live on and still keep the house,” says Kathy.

Neither Norris nor his wife knows how they will face retirement with all of their savings used to pay legal expenses. Arias’s bond hangs over their heads as well, and the government has said that it will seek to enforce it. That threat keeps Kathy up at

nights. She doesn't know what else they could give up, other than the house, or how they could possibly come up with the \$175,000 still owed.

Norris has already suffered the indignity of his grandchildren knowing that he spent over a year in federal prison and is a convicted criminal. What hurts him now is that he cannot introduce them to the hunting tradition—small game, squirrels, and rabbits—that has been a part of his family, passed from generation to generation. As a felon, he cannot possess a firearm. They sold off and gave away his grandfather's small gun collection, which he had inherited. In poor health and unarmed, Norris fears that he cannot even defend his own family.

But the hardest blow, explains Kathy, has been to their faith in America and its system of criminal justice:

I got raised in a country that wasn't like this. I grew up in a reasonably nice part of Dallas, I came from a family where nobody had been indicted for anything, and so had George. And the government didn't do this stuff to people. It wasn't part of anything I ever got taught in my civics books.

That lack of faith is almost visible in George Norris's frailty and fear. "I hardly drive at all anymore," he explained. "The whole time I'm driving, I'm thinking about not getting a ticket for anything.... I don't sleep like I used to; I still have prison dreams." He pauses for a moment to think and looks down at the floor. In a quiet voice, he says, "It's utterly wrecked our lives."

Conclusion

Probably any dealer in imported plants could have been prosecuted for the charges that were

brought against George Norris. His crime, at its core, was a paperwork violation: He had the wrong documents for some of the plants he imported but almost certainly could have obtained the right ones with a bit more time and effort. Neither he nor other dealers ever suspected that the law would be enforced to the very letter so long as they followed its spirit.

Norris was singled out because he was in the wrong place at the wrong time. As controversy roared over the kovachii and prosecutors were gunning for a high-profile conviction to tamp down sales in truly rare and endangered plants, Norris bragged that he would soon have the extraordinary flower in stock.

To this date, he has never seen one.

Armed with overly broad laws that criminalize a wide range of unobjectionable conduct, prosecutors could look past that fact. Burrowing through Norris's records, they found other grounds for a case. One way or another, they would have their poster child.

This is the risk that all American entrepreneurs face today. Enormously complex and demanding regulations are regularly paired with draconian criminal penalties for even minor deviations from the rules. Minor violations from time to time are all but inevitable because full compliance would be either impossible or impossibly expensive. Nearly every time, nobody notices or cares, but all it takes is one exception for the hammer of the law to strike.

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