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Written Testimony of

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Hearing on "Over-Federalization"

House Judiciary Committee
Subcommittee on Crime, Terrorism, and Homeland Security
United States House of Representatives

March 27, 2014

Chairman Sensenbrenner, Ranking Member Scott, members of the Subcommittee, thank you for inviting me to testify today on behalf of the National District Attorneys Association (NDAA), the oldest and largest organization representing over 39,000 district attorneys, State's attorneys, attorneys general and county and city prosecutors with responsibility for prosecuting 95% of criminal violations in every state and territory of the United States.

I am a Past President of the National District Attorney's Association, have been a prosecutor in the State of Maryland for 37 years and am currently the elected State's Attorney for Harford County, Maryland. During my time as a prosecutor my experience with Federal agencies has been largely one of cooperation, but the following is an example of how over-federalization can be more than just too many laws on the books.

On 3 December 2002, an 8 year old little girl did not return home from school in Baltimore. By 6 pm, Baltimore city police homicide and missing persons units were involved in the search. By midnight evidence was pointing to the mother's boyfriend, Abeokuto, as a suspect and his car was then seized for processing.

The following day in an effort to divert suspicion from him Abeokuto mailed an anonymous ransom demand to the mother suggesting that the kidnapping may have been committed by enemies of the girl's father. A few days later, a laboratory examination found the suspect's fingerprints and DNA on the letter.

The U.S. Attorney for Maryland obtained a warrant for sending a threat through the U.S. mail, a ten-year felony. The suspect had fled from Maryland. On 12 December, two boys walking home from school found the little girl's body in a remote wooded area in Harford County, in my jurisdiction. Her throat had been cut several times and she been struck in the head. Because of the short winter's day it was agreed that the crime scene would be secured overnight and processed in the daylight to avoid destroying or overlooking evidence. A warrant charging the suspect with a capital murder, kidnapping, extortion and related counts was issued.

At 9:00pm that evening I received a phone call from the officers at the crime scene. An Assistant U.S. Attorney and a team from the FBI had arrived to process the crime scene and had ordered the state police to turn over the crime scene. I had the officer hand his phone to the Assistant U.S. Attorney so I could ask him how the evidence that could be found around the

girl's body added anything to the Federal Threat by Mail case. That didn't dissuade him. I told him we would share what we found with the Feds. That didn't dissuade him from wanting to stomp all over my crime scene. I told him that I would have him and anyone else who crossed the crime scene tape arrested. After my final threat, the Feds finally left.

A week later the suspect was arrested in Birmingham, Alabama by the FBI. He was returned to Maryland, but the U.S. Attorney refused to allow the State to have access to the defendant to pursue our prosecution and placed the defendant in a holding facility in Maryland as far from my county as possible so that it took his State public defenders and entire day to drive to see him and back.

The U.S. Attorney would not take my phone calls or answer my letters as to why it was more important to create legal issues pursuing a ten year federal crime than a death sentence for murder. I attempted to negotiate with the Department of Justice and I also wrote to the Attorney General of the United States. After six months of frustration, I called every television station in Baltimore and asked them to meet me in front of the Federal courthouse. There I blasted the U.S. Attorney for being a publicity seeking ego-maniac who was subverting real justice in the case of this child and her grieving family. Two weeks later, the U.S. Attorney for Maryland stepped down and the custody of the defendant was surrendered to the State. I was left to wonder why there was no mechanism to have resolved this more quickly without all the wasted time and resources.

In another example, William J. Fitzpatrick, District Attorney of Onondaga County, New York and member of NDAA's Board of Directors, informed me of a more recent story of Federal over-reaching. In March of 2013, David Renz abducted a single mother and a 10-year old child in the parking lot of a suburban mall during the evening hours in Onondaga County in Central New York. Renz had a knife and showed what appeared to be a gun, but was later identified as an air pistol. Renz took his two victims and bound the mother to the front passenger seat of her car using plastic twist tie handcuffs. The 10-year old was bound and forced to get in the back seat.

Leaving his own car in a parking spot at the mall, Renz drove them to a remote road just outside of the mall. He ordered the child to disrobe and then ordered her to don pantyhose. He proceeded to cut the pantyhose with his knife and then raped her while Mom sat helpless in the front seat.

After Renz violated the child, the mother managed to partially free herself and open the door. She screamed at her daughter to flee and both managed to get out of the car. Renz proceeded to repeatedly stab the mother while the daughter fled in an opposite direction. Two good Samaritan drivers approaching the scene from opposite directions stopped to render aid - one to the mom, Laurie Bresnehan, and the other to the little girl. The mother expired at the scene but did learn her daughter was safe before she died from her wounds. The little girl suffered severe injuries and tears to her vaginal area which may prevent her from ever conceiving children. She is now back at school and living with one of mom's relatives as the mom was a single parent.

Fitzpatrick's chief Assistant District Attorney received a call from the head of the criminal division of the U.S. Attorney for the Northern District of NY and was told they would be handling the prosecution and asked that we "stand down." The NY Assistant District Attorney advised that the on-call homicide Assistant District Attorney worked the case with the NY State Police all night, the State of New York had already charged the defendant with Murder 1st degree and that Renz was being arraigned as they were speaking. Fitzpatrick contacted the U.S. Attorney and had a conversation with him. The Federal Attorney explained that there was a pending Federal pornography charge against Renz and this alone would mandate that they take the case and more importantly, it's a carjacking giving them jurisdiction.

Fitzpatrick asked how the carjacking theory could possibly apply as the defendant drove to the scene in his own car and obviously had no intent to steal the victim's car. Fitzpatrick ended the conversation by simply saying he would never relinquish the case and was going to call Washington. Hours later, Fitzpatrick received a call saying the US Attorney was going to "stand down." Days later, it became clear that Renz had been on federal pre-trial release from his pornography charge, with the consent of the U.S. Attorney, and had been required to wear an ankle bracelet monitoring his whereabouts. Media comments from the U.S. Attorney after this became public knowledge suggested that Renz was a "computer genius" who had managed to thwart the monitoring capability of the ankle bracelet. In reality, the alarm on his bracelet had gone off over 40 times, including the night of the rape and murder, and the company reported that it was directed to ignore these alarms by the federal probation department. Renz pled guilty to Murder 1st in state court and will be sentenced to life without parole as the State of New York

has no state death penalty. The child's guardians have expressed unequivocally that they have no interest in prolonging this case while the feds ruminate about the death penalty.

Despite that, and despite the specious claim of jurisdiction, the Northern District of New York has never submitted the paperwork to Washington to get the process started to seek death. To Fitzpatrick's knowledge, Attorney General Holder has never sought death in a carjacking case. Admittedly the prospect of death may have prodded Renz to plead guilty in state court, but it's unconscionable to learn that federal authorities haven't even spoken to the victims' family since July, when all the family told the Assistant U.S. Attorney that they are not supporting death for Renz.

Erasing unused laws from the Federal books can also make a strong statement of Federal priorities. I have prosecuted thefts that occurred on the Aberdeen Proving Grounds and were investigated by the FBI because the \$70,000 loss did not meet the U. S. Attorney's prosecution threshold. I have seen cases where drug dealers drive onto Federal property from the State jurisdiction to deal drugs because if they were caught they would not be prosecuted because the amounts of drugs they possessed would not meet existing thresholds.

The U.S. Attorney General and Deputy Attorney General recently issued guidance to U.S. Attorneys directing them to not prosecute low-level drug offenses, despite the fact that U.S. Attorneys have chosen not to prosecute low level drug offenses for decades. The Department of Justice has targeted the largest, most publicity-worthy drug offenses and has left the rest of the crimes for State and local prosecutors to handle despite already handling 95% of the criminal

violations in the United States. Also, when the Department of Justice chooses not to enforce certain sections of the Controlled Substances Act in States which have passed State law legalizing marijuana – in some cases, dealers who are selling hundreds of pounds a week in the States of Colorado and Washington - it sends the wrong message to Americans; it is now acceptable behavior for its citizens to break Federal law because the Federal government believes it has the right to pick and choose which priorities it needs to enforce.

I mention these examples because I believe they illustrate that if the U.S. Attorneys cannot act to protect Federal interests it is unlikely that they will act to prosecute most of the laws which cover States' interests and concerns. In reviewing existing or future Federal legislation the issue of who has the resources to investigate and prosecute a crime should be considered and whether utilization of those resources will result in neglecting other areas which should have a higher Federal priority.

Chairman Sensenbrenner, Ranking Member Scott, members of the Subcommittee, I appreciate the opportunity to testify before you on this important topic and will answer any questions which you may have.