

the criminal code was last revised. The existing criminal code is riddled with provisions that are either outdated or simply inconsistent with more recent modifications to reflect today's modern world. I introduced this Act in both the 109th and 110th Congresses. This new version incorporates criminal laws enacted during 2007 and 2008.

This measure is intended to continue the dialogue and process for rewriting the criminal code, with the hope that other Members, the Senate, the judiciary, the Justice Department, criminal law professors, and other interested professionals will provide input and seek to develop a more comprehensive re-write.

With the increasing federalization of local crimes, there is a need to review and revise Title 18 to ensure that such federalization is minimized and tailored to appropriate crimes where State and local prosecutions may not adequately serve the public interest. Federal prosecutions constitute only seven percent of the criminal prosecutions nationwide. We need to ensure that the federal role continues to be limited and that the State and local offenses are not subsumed within an ever-expanding criminal code.

Through the years, the criminal code has grown with more and more criminal provisions, some of which are antiquated or redundant, some of which are poorly drafted, some of which have not been used in the last 30 years, and some of which are unnecessary since the crime is already covered by existing criminal provisions.

This bill cuts over 1/3 of the existing criminal code; reorganizes the criminal code to make it more user-friendly; and consolidates criminal offenses from other titles so that title 18 includes all major criminal provisions (e.g. drug crimes in title 21, aviation offenses and hijacking in title 49).

To the extent possible, and for the most part, I applied a policy-neutral intent, meaning that changes were made to streamline the code in an effort to assist policymakers, practitioners (judges, prosecutors, probation officers) and other persons who rely on the code to implement criminal law enforcement and compliance. However, two general policy changes were made: (1) attempts and conspiracies to commit criminal offenses are generally punished in the same manner as the substantive offense unless specifically stated otherwise; and (2) criminal and civil forfeiture and restitution provisions were consolidated unless a more specific policy was adopted for a crime.

Creating a Uniform Set of Definitions for the Entire Title—In reviewing the code, there were instances where terms were defined differently. In most cases there was no evident policy basis for different definitions. To eliminate this problem, a common set of definitions was established in the first section of the revised code.

Revising the Intent Requirements—The Supreme Court has consistently criticized Congress for imprecise drafting of intent requirements for criminal offenses. In numerous occasions, improper drafting has led to confusion in the courts, requiring further modifications to clarify Congress' intent.

Courts and commentators alike have denounced the use of "willful" in statutes because of the word's inherent ambiguity. The term "willful" can have different meanings in different contexts and thus is a vague term

defying uniform definition. Therefore, because the Government has a duty to provide clear notice to the public regarding what behavior constitutes a crime, use of the "willful" language in statutes should be avoided.

The U.S. Supreme Court explained that the term "willful . . . is a word of many meanings, its construction often being influenced by its context." *Spies v. United States*, 317 U.S. 492, 497 (1943). See also *United States v. Murdock*, 290 U.S. 389, 395 (1933) ("Aid in arriving at the meaning of the word 'willfully' may be afforded by the context in which it is used."). The looseness of the definition is demonstrated in the many different interpretations of the word "willful" in federal statutes.

Courts have described "willful" as meaning a high degree of culpability, such as a bad or evil motive. E.g., *United States v. Harris*, 185 F.3d 999, 1006 (9th Cir. 1999) ("[T]he act to be criminal must be willful, which means an act done with a fraudulent intent or a bad purpose or an evil motive."). But cf., e.g., *Nabob Oil Co. v. United States*, 190 F.2d 478, 480 (10th Cir. 1951) (holding that "such an evil purpose of criminal intent need not exist" for a "willful" violation). The term can mean that a person must have actual knowledge that his actions were prohibited by the statute. E.g., *Ratzlaf v. United States*, 510 U.S. 135, 141-42 (1994) (interpreting "willful" to require "both 'knowledge of the reporting requirement' and a 'specific intent to commit the crime,' i.e., 'a purpose to disobey the law.'").

Courts and commentators have decried the confusion that follows use of the word "willful" in statutes. The lower courts repeatedly cite the fluctuating meaning of the term "willfully," which has "defied any consistent interpretation by the courts." *United States v. Granda*, 565 F.2d 922, 924 (5th Cir. 1978). Judge Learned Hand criticized use of the term "willful" in statutes: "It's an awful word! It is one of the most troublesome words in a statute that I know. If I were to have the index purged, 'willful' would lead all the rest in spite of its being at the end of the alphabet." Model Penal Code and Commentaries, §2.02, at 249 n.47 (Official Draft and Revised Comments 1985) (citing A.L.I. Proc. 160 (1955)). Indeed, the drafters of the Model Penal Code, for example, deliberately excluded the term "willfully" in the definition of crimes, stating that the term "is unusually ambiguous standing alone." Model Penal Code §2.02 explanatory note at 228 (Official Draft and Revised Comments 2005).

The revised criminal code employs a straight-forward approach—where possible, the term "knowingly" is used to define the requisite intent for every crime, except for those criminal offenses that require some additional, and more specific, intent. Each offense starts with "knowingly" and then adds, if necessary, some additional intent requirement (e.g. specific intent crime).

The term "knowingly," means that the act was done voluntarily and intentionally and not because of mistake or accident. It would be incorrect to suggest that the term means that the actor must realize that the act was wrongful. See e.g., *Bryan v. United States*, 524 U.S. 184 (1998), the Court explained: [T]he term "knowingly" does not necessarily have any reference to a culpable state of mind or to knowledge of the law. As Justice Jackson correctly observed, "the knowledge requisite to knowing violation of a statute is factual knowledge as distinguished from knowledge of the

law;" *United States v. Udofot*, 711 F.2d 831, 835-37 (8th Cir. 1983); *United States v. Gravenmeier*, 121 F.3d 526, 529-30 (9th Cir. 1997); *United States v. Tracy*, 36 F.3d 187, 194-95 (1st Cir. 1994), cert. denied, 115 S. Ct. 1717 (1995).

Under the doctrine of "willful blindness," a defendant may have knowledge of a fact if the defendant deliberately closed his eyes to what would otherwise have been obvious to him. *United States v. Hauer*, 40 F.3d 197, 203 (7th Cir. 1994), cert. denied, 115 S.Ct. 1822 (1995) (ruling that the older "ostrich" instruction is not error, but not preferred); *United States v. Ramsey*, 785 F.2d 184, 190 (7th Cir.), cert. denied, 476 U.S. 1186 (1986); *United States v. Arambasich*, 597 F.2d 609, 612 (7th Cir. 1979); *United States v. Gabriel*, 597 F.2d 95, 100 (7th Cir.), cert. denied, 444 U.S. 858 (1979). *United States v. Dockter*, 58 F.3d 1284 (8th Cir. 1995).

Eliminated Criminal Offenses that Have Not Been Used in Last 30 Years or Are Subsumed by Other Criminal Offenses—As described below and for each section, the revised code eliminated sections that had not been used by the Justice Department. Even in the absence of any significant use, some offenses were kept even if they were not used but for policy reasons need to be maintained to deter the commission of the crime (e.g. Assassination of a Supreme Court Justice).

Also, in reviewing the existing code, there were many specific crimes that were already covered by more general provisions. Typically, the more specific provisions were added to the code after the general provision was enacted, and there was no substantive difference in the newer and more specific offense.

This project required significant resources and assistance from the Legislative Counsel's Office, and in particular, Doug Bellis, the Deputy Counsel of that Office, and Caroline Lynch, Chief Republican Counsel, Subcommittee on Crime, Terrorism and Homeland Security, both of whom devoted substantial efforts to preparing this bill and should be commended for their extraordinary efforts.

HONORING KARIN BROWN

HON. MARIO DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 26, 2009

Mr. MARIO DIAZ-BALART of Florida. Madam Speaker, I rise today to honor a very special lady from the State of Florida, Karin Brown. She has dedicated her life to being an exceptional educator, community activist and fighter for Florida's children.

Karin currently serves as the President of the Florida Parent Teacher Association, an organization to which she has dedicated many years of service at both the local and state level. A wife to Bill Brown for nearly 40 years, mother of five and grandmother of three, she has made it her life mission to create a healthy relationship between students, parents and teachers and ensuring a stable environment in the classroom and at home for children. Her civic involvement includes serving on various community advisory boards, governing boards, task forces and as a liaison to organizations all focusing on child development, education and well being.

During my years in the Florida State Senate, I worked closely with Karin when she was Vice President of Protect America's Children in passing the Jennifer Act. This legislation, which I sponsored and became law in 1997, makes any credible threat or attempted assault of a minor 16 years of age and under a third degree felony.

In 1982 Karin and her husband found out that they were expecting their fifth child. The doctors also handed Karin a life-threatening diagnosis of Arterial Vinous Malformation on the left side of her brain. Karin and her son survived and one year after giving birth, she successfully overcame more than nine hours of brain surgery. She does not see her handicap as an ailment; on the contrary, it motivates her to continue serving the community and working for children.

As we celebrate Women's History Month, I ask you to join me in congratulating Karin Brown, a woman who lives her life with courage, a will to live, and a genuine passion to serve others.

EARMARK DECLARATION

HON. MARY BONO MACK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 26, 2009

Mrs. BONO MACK. Madam Speaker, pursuant to the Republican Leadership standards on earmarks, I am submitting the following information regarding earmarks I received as part of H.R. 2638, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009:

Requesting Member: MARY BONO MACK
Bill Number: H.R. 1105

Account: Department of Education, National Projects; Innovation and Improvement

Entity Requesting: Reading Is Fundamental, Inc., 1825 Connecticut Avenue, N.W., Suite 400, Washington, DC 20009

Description of Earmark: \$26 million is provided to Reading Is Fundamental, Inc. (RIF). RIF is one of our nation's oldest and largest children's literacy organizations. RIF partners with thousands of schools, public agencies, nonprofit organizations and corporations throughout our country and provides millions of underserved children with free books and reading encouragement from over 20,000 locations. Over the past 4 decades, RIF has provided books to more than 300 million children. RIF encourages reading both inside and outside of school by allowing youngsters to select books to keep at home.

RIF's Inexpensive Book Distribution Program: This program provides books for low-income children and youths from infancy to high school age and supports activities to motivate them to read, through aid to local nonprofit groups and volunteer organizations.

Spending Plan: Nearly 89 percent of RIF's 2007 federal funds were used to purchase books and RIF was able to use this as leverage to raise an additional \$8.6 million from local communities to support book ownership. With the help of Congress, RIF was able to provide more than 16 million books to 4.6 children last year.

FEDERAL LAND ASSISTANCE,
MANAGEMENT AND ENHANCE-
MENT ACT

SPEECH OF

HON. RAÚL M. GRIJALVA

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 25, 2009

The House in Committee of the Whole House on the State of the Union had under consideration of the bill (H.R. 1404) to authorize a supplemental funding source for catastrophic emergency wildland fire suppression activities on Department of the Interior and National Forest System lands, to require the Secretary of the Interior and the Secretary of Agriculture to develop a cohesive wildland fire management strategy, and for other purposes:

Mr. GRIJALVA. Mr. Chair, I rise in opposition to the Goodlatte Amendment and I urge my colleagues to join me in opposing this harmful amendment.

While I strongly support the FLAME Act, I am opposed to this amendment because it would undermine current protections for forest workers as well as preventing proper environmental review of projects. It would do this by dramatically expanding existing good neighbor authority that only applies to certain projects on National Forests in Colorado and Utah right now.

Specifically, this amendment would waive provisions of the National Forest Management Act protecting taxpayer interests. It would give discretion over projects on National Forests to state foresters, eliminating federal oversight and accountability, and it would limit the public's knowledge of when timber is sold.

I am also concerned that the amendment, if successful, would put into question federal labor standards and current wage protections for forest workers.

My subcommittee held a hearing last year which shined a light on how pineros, literally men of the pines, were not being adequately compensated or paid for their work under existing law. Delegating this to the state or some subcontractor or the state without assurances for workers is foolish.

Directly to this issue, the GAO released a report yesterday recommending caution on allowing broader authority until the federal government could ensure greater "transparency, competition, and oversight."

I agree with the GAO and believe that this amendment is just too broad and would waive too many existing laws that protect workers and the environment.

In sum, I want to voice my strong support for the FLAME Act, which will enable our public lands agencies to finally get ahead of the vicious cycle of budget-consuming catastrophic fires, and begin the process of working to protect communities and restore the nation's lands. I urge opposition to this amendment and support for the underlying bill.

RECOGNIZING 188TH ANNIVERSARY
OF GREEK INDEPENDENCE

SPEECH OF

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 24, 2009

Mrs. MALONEY. Madam Speaker, as an original cosponsor of H. Res. 273 and a co-chair and co-founder of the Congressional Caucus on Hellenic Issues, I rise today to celebrate the 188th anniversary of Greece's declaration of independence from the Ottoman Empire.

Against incredibly difficult odds, the Greeks defeated one of the most powerful empires in history to win their independence.

Following 400 years of Ottoman rule, in March 1821 Bishop Germanos of Patras raised the traditional Greek flag at the monastery of Agia Lavras, inciting his countrymen to rise against the Ottoman army.

The Bishop timed this act of revolution to coincide with the Greek Orthodox holiday celebrating the archangel Gabriel's announcement that the Virgin Mary was pregnant with the divine child.

Bishop Germanos's message to his people was clear: a new spirit was about to be born in Greece.

The following year, the Treaty of Constantinople established full independence for Greece.

New York City is home to the largest Hellenic population outside Greece and Cyprus.

Western Queens, which I have the honor of representing, is often called Little Athens because of the large Hellenic population in that neighborhood.

New Yorkers celebrate Greek Independence Day with a parade on Fifth Avenue in Manhattan, along with many cultural events and private gatherings.

These events, hosted by the Federation of Hellenic Societies and other Hellenic and Philhellenic organizations and friends, remind us of the Hellenic-American community's many contributions to our nation's history and culture.

I am also pleased that President Obama is continuing the tradition of holding a White House celebration in honor of Greek Independence Day.

My fellow co-chair Representative BILIRAKIS and I sent a letter last month urging the President to recognize this truly important day.

Relations between the United States and Greece remain strong with a shared commitment to ensuring stability in southeastern Europe. I hope permanent solutions can be found for ending the division of Cyprus and finding a mutually agreeable name for the Former Yugoslav Republic of Macedonia.

Additionally, I strongly support the inclusion of Greece in the Visa Waiver Program. Greece is the only member of the original fifteen European Union nations not to belong to the Visa Waiver Program.

I, along with my colleagues, will continue to work to ensure that the process for Greece's entry into the Visa Waiver Program continues to move forward.

Additionally, I have recently reintroduced legislation which urges Turkey to respect the rights and religious freedoms of the Ecumenical Patriarchate.