

PREPARED STATEMENT OF ABNER SCHOENWETTER

*Congressional Testimony*

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**Reining in Overcriminalization: Assessing the  
Problems, Proposing Solutions**

***The Devastating Consequences of Overcriminalization on  
a Small Businessman and His Family***

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

**September 28, 2010**

**Abner Schoenwetter**

Before discussing any of the details of my personal story, I would first like to say thank you to Chairman Scott, Ranking Member Gohmert, and the members of the subcommittee for taking the time to hold a hearing on the problem of overcriminalization. I have to admit that up until a few years ago, I had never heard of the term overcriminalization or given much thought to what it meant. It wasn't until I began reading materials on criminal law during my time in prison that I quickly came to realize that I already knew much more about the topic than anyone would ever care to know.

I have been asked to testify before this subcommittee because I am what many people call a "victim" of overcriminalization. I really don't like to think of myself as a victim of anything, but there is no arguing that there is some accuracy to the label. No matter how you frame it, the truth is that I am a convicted felon who has just spent the last six years of my life in federal prison for entering into a contract to buy lobsters. The specifics of the case are slightly more complicated than that, but that was more or less the basis for my overall conviction. It may sound crazy, but sadly, it's true.

But I'm not testifying here today to complain about my personal predicament or to seek publicity for my case. I simply wish to prevent other Americans from having to go through the same terrible ordeal that my family and I have had to endure. If I can help just one family avoid the pain and suffering of watching a loved one go to prison because of vague and overbroad laws, then I will consider my appearance here a success. Similarly, if my story can somehow aid the overall effort to achieve meaningful criminal justice reform by alerting those of you here on Capitol Hill to the negative effect of poorly written laws, then I will have done what I came to Washington to do.

Looking at my story objectively, it is relatively hard to explain how this all happened to me. I am and have always been a quiet, hard-working, law-abiding, family man. I am first and foremost a husband and a father. I live for my three children and my wife and would do anything and everything to make them happy. I am also one of Florida's small businessmen... or at least I was. I have always valued hard work, dedication, and self-reliance, and have attempted to lead a life grounded in these principles. These are the values my parents instilled in me as a young boy, and they are the ideals that I have worked to pass along to my children. Strong values, however, do not prevent bad things from happening to good people. Life has a way of challenging everyone, and it challenged me in a way that I never could have expected – by catching me in an overcriminalization trap.

I have been in the commercial seafood business since 1986. I met one of my co-defendants, David Henson McNab, that year and we struck up an arrangement where I would buy his catches of lobster tails and resell them. Some of the seafood I purchased from him might well have been passed around your dinner table at home or ended up on your plate at a restaurant. We built a good business relationship over the course of the next fifteen years, and our relationship quickly blossomed into a friendship. Through hard work and determination, I was able to build my small company, Horizon Seafood, into a successful business. It by no means made me rich, but it did earn me enough to

provide for my wife and three children. It was my little piece of the American dream. Little did I know, however, that a single boatload of Honduran lobsters would soon turn my dream into a nightmare.

Between 1986 and 1992, David and I engaged in a number of successful business deals. It was during that time that I met my other co-defendant, Robert Blandford. Bob Blandford was a seafood broker who had developed many good customers for lobster tails. With my ability to purchase high-quality seafood and Bob's extensive customer base, we started a relationship that eventually became a partnership. There was no need for anything in writing. As is the custom in the seafood business, things were sealed with a handshake.

In 1995, Bob and I joined forces to purchase and distribute seafood, including lobster tails from David. We imported the lobsters under the banner of Bob's company, Seamerica. As was always the case in my dealings with David, his product was of the highest quality and always delivered on schedule. There was never a problem with his operation or personal character.

In early 1999, Bob and I agreed to buy a typical load of Caribbean spiny lobster from David to be delivered to his facility in Bayou La Batre, Alabama, in February. As usual, we planned to sell it to larger distributors throughout the United States. It was no different than any of the other hundreds of deals we did over the years. Every one of our shipments always cleared customs and passed FDA inspection even after being held up at times for random sampling and testing.

What was different this time was that David never delivered on the contract because the contents of his ship were seized by the National Marine Fishery Service (NMFS) in Bayou La Batre. Bob and I didn't know the reason for the seizure at the time, but we surely weren't happy about the missed delivery. It put us behind the eight ball on our sales to distributors and forced us to find other options for the lobster we needed. Because we had no reason to think otherwise, our attention at the time was purely on the business effects of the government seizure. We had no clue that the taking of the lobster by the NMFS would be the first step toward finding ourselves charged with felony conspiracy and smuggling charges.

As time passed, we learned more details about the seizure of David's lobsters. The NMFS had evidently received an anonymous fax (most likely from one of David's fishing competitors) stating that a shipment of "undersized (3 & 4 oz) lobster tails" was coming into Bayou La Batre at the exact time David was due in port. This supposedly violated some Honduran regulation, but not U.S. law. After the NMFS acted upon the tip, it held David's boat and its contents in port for a number of weeks before finally offloading the lobster and shipping it to a government-owned freezer in Florida.

During the next six months, we heard of negotiations between David's attorneys and the attorneys for the government. In fact, my lawyer was told that a deal had been struck between David and the federal government, whereby the government would confiscate

the percentage of lobster that was said to be in violation of Honduran law and release the balance to David for return to Honduras. The government also assured David's attorneys that this was strictly a civil matter and would not involve criminal charges.

Nothing could have been further from the truth. A short time later both Bob and I were called before a federal grand jury in Mobile, Alabama. The next thing I knew, armed agents from the FBI, IRS, and NMFS showed up at my house in Pinecrest, Florida, with search warrants. I was shocked, appalled, and scared all at the same time. As my office was based out of my house, my family was also there. It was 7:00 in the morning and my wife, my mother-in-law, and my daughter were herded in their night clothes into the living room and told to sit and be quiet. Needless to say, they were frightened to death.

Not long after this incident, a similar group of federal agents came to my house a 6:00 in the morning to arrest me. They found only my son and his girlfriend there as I was in North Carolina at the time. After threatening my son with arrest if he did not tell them where I was, he called me and I had my attorney contact them at the house and agree that I would self-surrender in Mobile, Alabama. The government was treating my family like I was a suspected murderer rather than a seafood purchaser. I couldn't believe it.

After my arrest, I eventually found out that I was being charged with smuggling and conspiracy based upon violations of Honduran fishing regulations that applied to me under a federal law known as the Lacey Act. I was being prosecuted by the United States government because the lobsters that I had contracted to buy were allegedly in violation of three Honduran administrative rules. The first regulation supposedly required that all lobsters be packaged in cardboard boxes rather than plastic bags for shipping purposes. The second supposedly required that all lobsters caught and sold be at least five and a half inches in length. The third supposedly prohibited the harvesting and sale of all egg-bearing lobsters. I was facing multiple years in prison and thousands of dollars in fines if found guilty.

I couldn't understand how I was wrapped up in all of this. I had never seen the lobsters on David's boat, nor did I know anything about these specific regulations, yet I was still being accused of multiple federal felonies. It just didn't make sense. How could I smuggle lobsters into the U.S. that I was openly and legally purchasing via contract? How could I conspire against Honduran law when I knew nothing about the regulations I supposedly violated? How could I have contributed to the violation of these regulations when I knew nothing about how or where the lobsters were caught in the first place? None of it made any sense.

Facing these charges, I immediately hired a lawyer and began weighing my options. I could cave into government pressure and accept the prosecutor's offer of three years in prison by pleading guilty to the bogus charges against me. Or else I could fight for myself, my family, my livelihood, and my reputation by standing up and defending my actions. Maybe it's the New Yorker in me, but there was only one choice my conscience would let me make. I had to fight the charges in court as hard as I could. I had to prove

to my country and those who mattered to me most that I was the same law-abiding and honest citizen I had always been throughout the first 54 years of my life.

Fighting the government, however, proved much more difficult than I expected. As a family man and father of three, I couldn't afford to hire a team of high-priced defense attorneys. The Government also pressured the court to dismiss the attorney I had chosen and trusted, a seafood law expert. They claimed that he had potential conflicts of interest, but I'm sure they didn't like that he knew seafood law extremely well. So I hired lawyers I had never met before from Mobile, Alabama. The prosecutors and judge did not seem interested in whether I knew anything about the Honduran regulations or David's fishing activities. As far as they were concerned, because I had contracted to buy lobsters from David, I was along for the ride.

Most of my trial dealt with the complex relationship between the Honduran regulations and American law. The issue was so complicated in fact that the judge was forced to hold a separate hearing to determine the validity and meaning of the Honduran rules. Our lawyers presented a great deal of evidence showing that the regulations were invalid and should therefore not be used against us. They presented a letter from the Attorney General of Honduras confirming that the size regulation had never been signed into law by the Honduran president. They also gathered testimony from a former Honduran Minister of Justice discussing how the egg-bearing regulation was primarily directed at turtles and was never meant to apply to lobsters. None of this evidence mattered to the court, however.

It still makes no sense to me that my criminal trial turned into a battle over the meaning of Honduran fishing regulations. I had always been an honest, law-abiding, tax-paying American citizen. Why was my fate determined based upon laws written by Honduran officials and bureaucrats? And why would Congress write a law like the Lacey Act that gives foreign countries the power to criminalize American citizens? It is bizarre. It is hard enough for the average person to know the difference between legal and illegal behavior under U.S. law without having to worry about the laws of every other nation on Earth. Did Congress really review the laws of Honduras and every other country and make a careful decision as to whether those laws should apply to Americans?

The portions of my trial that did not have to do with the validity of Honduran law focused almost exclusively on David and his actions. Very little time or evidence was presented to establish that I had any relationship to the violation of the fishing regulations. It simply seemed like the government just needed to prove I had a business relationship with David to link me to his alleged criminal behavior. No evidence was ever presented to show that I knew David was violating Honduran regulations, aided him in breaking those rules, or conspired to smuggle anything into the United States.

Despite this fact, the jury found me guilty of both conspiracy and importation contrary to law. I could not believe it. I was devastated on so many levels. My family was in shock. How could someone like me with no history of ever getting into trouble end up becoming a convicted felon?

Up until this point, I had been convinced that the justice system would sort out the whole mess. Throughout the trial, I had held out hope that the prosecutors and judge would come to their senses, recognize my innocence, and let me get back to my law-abiding life. All of that hope went out the window, however, when the jury found me guilty in November 2000 and the judge later sentenced me to 97 months in prison! In addition, I would have to serve 3 years under supervised release and pay a \$15,000 fine and a \$100,000 forfeiture, which I had to re-mortgage my house in order to pay.

I tried to remain optimistic in the wake of my trial and sentencing, but it was hard to fight back the fear about what likely lay ahead for me – separation from my family... the loss of my business ... prison. It was almost too much to bear. I found it difficult to focus on the appeal of my conviction and easy to go through my days in a general state of sadness. I soldiered on to the best of my ability, but I was no longer the same man.

As you might expect given the nature of my trial, my appeal to the 11th Circuit Court of Appeals in Atlanta also fell on deaf ears despite continued efforts to highlight the invalidity of the Honduran regulations upon which my conviction was based. My attorneys presented evidence that the Honduran Court of First Instance of Administrative Law had declared the lobster size regulation null and void and stated that it never had the force of law. They also presented evidence from the Honduran National Human Rights Commissioner showing that the lobster packaging regulations had actually been repealed in 1995 and that the egg-bearing provision had been retroactively repealed by the Honduran government. All of this evidence was directed to the U.S. State Department by the government of Honduras, which also filed a friend-of-the-court brief during our appeal.

Still, none of it mattered. Two out of the three appeals court judges affirmed my conviction, claiming that Honduran officials could not be trusted to interpret their own laws. They argued that it would be unwise for a court to overrule the American prosecutors' view of Honduran law. They claimed this was a political issue, not a legal one, and that for some reason prosecutors are better able to make decisions than courts are. I don't know how my friends and I were supposed to guess what some prosecutors would later decide Honduran law means. Despite the overwhelming evidence presented by my attorneys and the Honduran government that these three fishing regulations were invalid, the two judges in the majority could not be persuaded.

I should also mention here that the government's "star witness" at trial on Honduran law – Ms Liliana Paz, a mid-level Honduran bureaucrat who was falsely represented as a high-level official – had by then recanted her testimony three times. She had previously stated that the fishing regulations were valid although she had no authority to do so under Honduran law. All this was also ignored by the 11th Circuit.

Given the appeals court's devastating decision, I had only one last legal resort – an appeal to the U.S. Supreme Court. When they refused to hear my petition, reality began to sink in. I was going to spend the next several years of my life in prison and be permanently

branded a felon. Shortly after the appeal was turned down by the court, I again self-surrendered to the government to begin serving my sentence.

I don't want to dwell too long on my time in prison because it is as you would imagine – a mind-numbing, soul-crushing, life-draining experience. No matter how much advice you get from former inmates or how much you prepare yourself mentally for the experience, you cannot possibly ready yourself for that first night when the lights go out and the door shuts behind you. It scares you to death and makes you question yourself in ways you never thought possible.

Taking these facts into consideration, it is still difficult to say whether prison is tougher on the inmate or the inmate's family. In my case, prison certainly ground me down. It made me a far less trusting person and triggered a range of personal health problems that I am dealing with to this day. It also cost me my reputation, my livelihood, and my ability to vote. The toll on my family, however, was perhaps even more immense.

In the wake of my incarceration, each and every member of my immediate family began to suffer a wide range of medical and non-medical problems. My wife recently suffered a heart attack while I was in prison. She was also forced to file for bankruptcy due to the mounting costs of defending my court case, paying my criminal fines, and complying with government forfeiture requests. Meanwhile, my son was forced to change jobs and relocate back to Florida in order to help take care of my wife and daughters. The stress of becoming the new "head of the household" also caused him to undergo emergency surgery for debilitating stomach ulcers that continue to this day.

In addition to these family issues, both of my daughters also began to develop health issues of their own. During the course of this ordeal, my eldest daughter suffered a stroke at the age of only 31 that left her slightly incapacitated and in need of care from family members and health professionals. My youngest daughter began to develop anorexia as a result of my conviction, sentencing, and imprisonment. As one might expect, treatment of the disorder has been costly and has placed the family under even greater financial pressure.

In short, my family has desperately struggled to cope with the fallout of my conviction and entrance into federal prison. We have spent all of our personal savings on legal representation and fines. Although we are still in our house in Miami, the bank has foreclosed and there is nothing stopping it from seizing the property at a moment's notice.

On August 27, 2010, I completed the last five months of my six years and three months of confinement at home. I am now under three years of federally supervised release, and the most pressing challenges for me and my family still remain. I struggle daily with how to readjust to life after prison and often find myself reflecting on a number of important personal questions. How do I reconnect with family and friends? Will they view me in the same light as before my time in prison? How do I start my financial life over at age 64 with only Social Security income to depend on?

With time I hope to find the right answers to these questions and regain some semblance of my former life. In the meantime, however, I owe it to my family and myself to tell my story and alert people to the tragedies that overcriminalization can cause when the criminal law is not properly written or limited.

I am by no means a lawyer or expert in criminal justice policy, but like most Americans I think I have a good gut sense of what is right and what is wrong. And like most Americans, I think it should be the role of the law to draw clear, understandable lines between those activities that society labels as moral rights and those that it labels moral wrongs. When there are so many thousands of criminal laws on the books, none of us can be certain how our actions will be mischaracterized by the government. This is a problem that must be addressed.

The law needs to be simplified, made clearer, and written in a way that gives average Americans an understanding of what he or she can and cannot do. Simple changes such as these would go a long way toward protecting innocent people from unfair prosecution and unjust prison sentences. Such modifications might be too late to benefit my family, but my sincere hope is that they help protect other Americans from the devastating effects of overcriminalization.