

Abner Schoenwetter – Overcriminalization Victim

Subcommittee on Crime, Terrorism, and Homeland Security – September 28, 2010

At the age of 64, Abner (“Abbie”) Schoenwetter is trying to start his life over again. He has been serving an 8-year sentence in federal prison for a seafood sales transaction. According to the U.S. government, a lobster catch Abbie had agreed to purchase violated three Honduran administrative regulations. The Honduran government filed a legal brief stating that the three regulations were invalid and unenforceable against Abbie and the three other persons charged by the U.S. in the case. The Attorney General of Honduras wrote to the U.S. Attorney General certifying that this was correct. How is it then that this hard-working small businessman with no criminal history was convicted of multiple felonies and sentenced to 97 months in federal prison?

- Abbie was a Florida seafood importer and distributor who occasionally bought lobster tails gathered in the waters of the Caribbean near Honduras.
- In February 1999, the National Marine Fisheries Service (NMFS) received a fax about a cargo vessel bound for Alabama. It alleged that the vessel’s lobster catch was in violation of Honduran regulations. The anonymous tipster claimed that the lobsters were undersized and in plastic bags, not cardboard boxes, as supposedly required by Honduran regulations.
- The NMFS seized the shipment under the Lacey Act, which makes it a federal crime to violate any fish or wildlife law or regulation of any nation on earth. The lobsters were to be bought and distributed by Abbie and other Americans.
- After the seizure, federal officials spent several months scouring Honduran law to find a basis for criminal charges. The theory they came up with was that the lobster catch violated three obscure Honduran administrative regulations (1) requiring seafood to be exported in cardboard boxes, (2) prohibiting harvesting lobsters with tails shorter than a specified length, and (3) prohibiting the destruction or harvesting of eggs or offspring of aquatic species.
- In November 2000, a federal jury found Abbie and his co-defendants guilty of multiple counts related to violations of the Lacey Act, all premised on violations of the invalid Honduran regulations.
- In June 2002, the Honduran government filed a brief supporting Abbie and his co-defendants’ appeal. The brief stated the following about Honduran law: (1) the size regulation at issue was void *ab initio* and had no legal bearing on the case whatsoever, (2) the packaging regulation at issue had been repealed in 1995 and therefore was not in effect during the period of alleged criminal activity, and (3) the egg-harvesting regulation at issue never prohibited the purported activity of the co-defendants and had no legal effect because of its retroactive repeal.
- Despite the protests of the Honduran government, the appeals court affirmed the convictions. An April 2003 letter from the Attorney General of Honduras criticized this decision and reasserted the invalidity of the regulations that served as the basis for Abbie’s conviction.

Abbie was released on probation on August 27, 2010. But throughout his incarceration, Abbie’s wife and their three children have suffered extensive stress-related illnesses and have lived on the edge of bankruptcy. They never thought such things could happen in America.