

**Statement By**  
**Congressman Robert C. “Bobby” Scott**  
**Chairman, Subcommittee on Crime, Terrorism**  
**And Homeland Security for**  
**Over-Criminalization of Conduct/Over-Federalization of Criminal**  
**Law**

**Wednesday, July 22, 2009 at 3:00 p.m.**

**Rayburn 2237**

**Good Afternoon,**

**Today’s hearing about the over-criminalization of conduct/the over-federalization of criminal law comes after a series of conversations Ranking Member Gohmert and I have been having with former Attorney General Edwin Meese and a coalition of organizations, including the Washington Legal Foundation, the National Association of Criminal Defense Lawyers, the Heritage Foundation, the ACLU, the Constitution Project, the Cato Institute, the American Bar Association and the Federalist Society and others. They have come to Congress to seek consideration and review of the**

**practice and process of enacting federal criminal law, and they have come out of concern for what they and many others view as an astounding rate of growth of the Federal Criminal Code. They question the wisdom of continued expansion of the Criminal Code without first taking the time to consider and review the process by which crime legislation is enacted.**

**But more than the rate of growth of the Code, these concerned citizens and groups are concerned about the deterioration that has occurred in the standards for what constitutes a criminal offense.**

**There is great concern over the reach and a perceived lack of specificity in criminal law standards— a perceived vagueness and the disappearance of the common-law requirement of mens rea, or “guilty mind”. The mens rea requirement has long served an important role in protecting those who did not intend to commit wrongful or criminal acts from prosecution and conviction. Mens rea elements such as specific intent, willful intent and the knowledge of specific facts constituting the offense are part of nearly all**

**common-law crimes. They have served as a means of protecting society, and without these elements honest citizens are at risk of falling into traps, being victimized and criminalized by poorly crafted legislation and overzealous prosecutors. Here's an example of extreme criminalization.**

**Federal prosecutors brought charges against three seafood dealers for the “crime” of importing frozen seafood from Honduras in the wrong containers. An obscure Honduran regulation required that the frozen seafood be shipped in cardboard boxes instead of the see-through plastic bags that were used. Even though the shipments were cleared by Customs and the Food and Drug Administration, prosecutors also charged the businessmen with “smuggling” the seafood. And because the businessmen paid for the seafood through their normal operations, they were also charged with money laundering. The three defendants are each currently serving a eight-year prison term for their so-called crimes, even though civil remedies were available to handle this minor regulatory infraction.**

**I have been working in the field of criminal justice for a long time, and thought I had heard everything.**

**We in Congress must understand that we make law-abiding Americans vulnerable to losing their freedom, their livelihood, their lives when we enact laws that are vague and fail to clearly communicate the illegality and criminality of the proscribed acts, or that are so complex, so numerous, so scattered around the Federal Criminal Code that is virtually impossible to anyone to know when he/she violated a law. We are setting a trap for the uninformed, the unaware and the naive. We needlessly and unfairly punish actions that are no more than truly honest, innocent mistakes.**

**Without such specificity in our laws we, as legislators, place all levels of society and a wide array of unconscious and seemingly “innocent” behaviors, at risk of being criminalized. Additionally, we place in the hands of investigators and prosecutors the increasing power to investigate, prosecute and convict citizens who have not intended to commit a crime. The Kemba Smith case is an example of the kind**

**of over-criminalization that occurs when we don't require sufficient standards for being convicted of a criminal offense.**

**This is one of the so-called "girlfriend cases" where a young woman with no criminal history was sentenced to spend 25 years in prison because, as a 19-year-old college student, she fell in love with someone who turned out to be an abusive drug-dealing boyfriend.**

**Although the evidence showed she never handled or used drugs and was not directly involved in any drug dealing, she ended up getting a totally irrational sentence for passing a note at the boyfriend's request to an accomplice . Even worse, there are many cases where such minor role defendants actually get a higher sentence than the principals because, unlike the drug -dealer, they have no information to trade for a below-mandatory minimum sentence.**

**When we enact criminal legislation, there is the issue of "need". Do we need to enact more laws at the federal level on the particular subject -- i.e., is there a valid purpose to be served by creating the crime at the federal system, particularly if it duplicates crimes at the**

**state level? Or, would it be better to provide resources to states to better accomplish the enforcement task that is primarily theirs? Why should car-jacking be a Federal offense? State and local law enforcement have been investigating and prosecuting these cases long before Congress made it a Federal crime, and they've been doing the job quite well. Wouldn't it be better in such a situation for the Federal government to provide resources in the form of training, professional development, use of crime labs, consultation regarding best practices in law enforcement and investigations and other assistance? These are the kinds of question we should be asking before we enact more federal criminal laws. We should also be asking these same questions about many of the laws we already have.**

**We are honored today to hear from a panel that includes distinguished experts, practitioners who have long grappled with these issues as well as two individuals, private citizens who will share their personal stories of the dangers of engaging in seemingly**

**innocent conduct only to have their lives shattered as they were investigated, prosecuted and incarcerated for offenses that many will still scratch their heads in wonder – where’s the “crime”?**

**Some of the questions their testimony will raise include whether Congress should:**

- **authorize a review of existing Federal laws with specific emphasis on those laws that have been enacted but are not being enforced;**
- **reconsider how best to fight crime within the Federal system**
- **reconsider the true Federal interests in crime control versus the risks of Federalizing local crime;**
- **articulate general principles which should guide it (Congress) in determining whether to create new crimes and implement mechanisms to foster restraint on further Federalization - (such as through a federalization assessment by a select joint committee);**
- **enact “Sunset” provisions with respect to both existing laws that are not being enforced, and new laws; and**
- **whether the proper response to public safety concerns is enactment of new federal crime legislation or increased federal support for state and local crime control efforts.**