

White Collar Practice Alert

April 4, 2008

*H.R. 4110 — Proposed Increases in Prosecutorial
Authority to Restrain Assets Pre- and Post-Indictment*

On April 3, 2008, Andrew Weissmann testified before the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security regarding current proposals to amend federal restitution laws, including the proposed "Preservation of Assets for Restitution Act." Also testifying were Senator Byron Dorgan (sponsor of the companion bill in the Senate, S. 973, to view, please [click here](#)), attorney David Smith, former United States District Judge Paul Cassell, and Professor Jonathan Turley. Certain Republican members expressed support for the bill, but almost all members expressed concern about the scope of the new

restraints on individual and corporate assets.

In his testimony, Andrew Weissmann analyzed how the proposed bill would allow the pre-conviction, and even pre-indictment, *ex parte* restraint of untainted assets that may be needed to satisfy a restitution order. Mr. Weissmann stated the bill has a dearth of procedural safeguards for defendants and putative defendants and would lead to an unwarranted increase in prosecutorial power, without concomitant benefits to the public and crucial procedural protections. He also testified about the potential Draconian impact on corporate and individual

defendants if the bill were enacted. (To view full written testimony, please [click here](#)).

David Smith discussed the Sixth Amendment implications of the proposed bill. (To view full written testimony, please [click here](#)).

Professor Turley discussed the reduction of judicial discretion under the proposed bill. (To view full written testimony, please [click here](#)).

Paul Cassell supported the bill, and also offered several suggestions on improving recovery of restitution for victims. (To view full written testimony, please [click here](#)).

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