

Still Waiting: House Of Representatives Over-Criminalization Task Force Report

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Over the past six months, we have been keeping a watchful eye on the U.S. House of Representatives Over-Criminalization Task Force and awaiting the results of their efforts. Since June 2013, the Task Force has held eight hearings to discuss a wide array of topics and to obtain expert testimony pertaining to the federal criminal code and the consequences of this country's perpetually expanding federal criminal laws. The Task Force concluded its proceedings in early August 2014, but a report has not yet been issued. As we await the report, we anticipate some very interesting observations and recommendations from the Task Force – recommendations that may have a significant impact on the federal criminal landscape. In its first session in June 2013, the Task Force defined the scope of the problems to be addressed. The first session included statements from ranking Judiciary Committee members, statements from the American Bar Association (ABA), The Heritage Foundation, and the National Association of Criminal Defense Lawyers (NACDL), as well as letters and statements from individuals. The initial problems identified included the ever increasing number of federal criminal laws, the many regulatory crimes that do not require intent on the part of the violator, the confusing and convoluted nature of federal criminal law, over-incarceration as a result of such a wide array of criminal laws, the need for intervention programs to prevent crime, and others. Of the various witness testimonies, the statements provided by William Shepard of the ABA and George Terwilliger, III were particularly interesting. George Terwilliger, III, a partner at Morgan Lewis, pointed out that the ever-expanding federal criminal code has resulted in government overreach that threatens individual liberties. In Terwilliger's opinion, legislators have used criminal law to effectuate their agenda and lost sight of the purpose of the Constitution as a protector of individual freedoms *from* government. He stated, "[w]e are on a path that is taking us from a system of ordered liberty through the rule of law to one of liberty that is only as extensive as government fiat allow." Terwilliger's most important point was his suggestion that intent be expressly required in order for an individual or business to be convicted of any federal crime. He said, "[t]his could [eliminate any question as to strict criminal liability offenses](#) being actionable and would reintroduce to Federal criminal law the fundamental and venerated principle that a criminal offense must include proof of intent to do a bad act." William Shepard, Chair of the ABA's Criminal Justice Section, noted the detrimental impact of implementing laws without considering their long-term impact. Clearly, the sheer number of criminal laws puts a strain on the criminal legal system. But most importantly, as Shepard pointed out, an increase in criminal laws inevitably results in criminalizing conduct that goes beyond the scope of what the law was originally intended to accomplish. He used the conviction of a commercial fisherman for disposing of three red grouper under the government's post-Enron anti-document shredding statute as an example. In Shepard's opinion, great care must be taken by legislators to consider the long-term impact of criminal laws they enact. In other words, it is important that there be a broad (as opposed to a narrow) and long-term (as opposed to short-term) analysis of

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the objectives and consequences of criminal legislative enactments. As we await the Task Force's report, we can only speculate as to its conclusions and recommendations. It will be particularly interesting to see if the report addresses the impact of the enforcement of federal criminal law on individual liberties, and the sometimes short-sighted perspective utilized by legislators when enacting new criminal statutes.