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## Foreword

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# SYMPOSIUM ON OVERCRIMINALIZATION

## FOREWORD

Zach Dillon\*

In 1967, Professor Sanford Kadish wrote of a “crisis of overcriminalization,” which he broadly defined as the use of the criminal law to pursue public policy objectives for which it is poorly suited.<sup>1</sup> In the years since, countless criminal law scholars have criticized the broadening scope of our criminal justice system, whether it be through federal criminal statutes that encroach on the traditional domain of state law, laws that criminalize conduct that poses no serious threat to society, or sentencing policies that create disproportionate and unjustified punishments.

Overcriminalization is one of those rare topics where both the political right and political left come together. The Heritage Foundation and the American Civil Liberties Union joined forces to cosponsor our live Symposium and send the unified message that whether you are liberal, moderate, or conservative, overcriminalization is an issue that can no longer be ignored. Yet, despite this bipartisan support, the tendency to overcriminalize continues to grow stronger.

The United States now has the highest incarceration rate in the world.<sup>2</sup> Currently, approximately 2.1 million Americans are incarcerated,<sup>3</sup> another

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\* J.D., Northwestern University School of Law, May 2012; Symposium Editor, *Journal of Criminal Law and Criminology*, vol. 102.

<sup>1</sup> Sanford H. Kadish, *The Crisis of Overcriminalization*, 374 ANNALS AM. ACAD. POL. & SOC. SCI. 157 (1967).

<sup>2</sup> POLITICAL RESEARCH ASSOCS., TRENDS IN THE CRIMINAL JUSTICE SYSTEM (2005), available at <http://www.publiceye.org/defendingjustice/pdfs/factsheets/8-Fact%20Sheet%20-%20Trends.pdf>; *Entire World—Prison Population Rates per 100,000 of the National Population*, INT’L CENTRE FOR PRISON STUD., [http://www.prisonstudies.org/info/worldbrief/wpb\\_stats.php?area=all&category=wb\\_poprte](http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_poprte) (last visited Nov. 24, 2012).

<sup>3</sup> See POLITICAL RESEARCH ASSOCS., *supra* note 2, at 2.

4.9 million are under community supervision,<sup>4</sup> and 2.5 million people are employed in the criminal justice system.<sup>5</sup> Collectively, our criminal justice system involves nearly as many people as our entire manufacturing sector.<sup>6</sup> We have surpassed the maximum capacity of our prisons<sup>7</sup> and cannot financially maintain the growth of our criminal justice system.<sup>8</sup>

Much has already been written on the problem of overcriminalization.<sup>9</sup> We did not put together this Symposium to define the problem or simply prove its existence. Rather, this issue is dedicated to renewing the political and academic discourse on the overcriminalization phenomenon and calling for renewed efforts to provide a solution. In doing so, we hope to follow in the footsteps of John Henry Wigmore and Roscoe Pound, who founded the *Journal* to promote an understanding of criminal conduct that would result in reforming the criminal code.<sup>10</sup> As such, our success or failure can only be measured in the years to come by its effect on how we as a country wield our criminal justice system.

We owe tremendous thanks to our generous sponsors, the Heritage Foundation and the American Civil Liberties Union. In addition, the *Journal* would like to thank the authors for their innovative and insightful contributions to this Symposium. We would be nothing without your hard work. We would also like to thank the *Journal*'s 2011–2012 editorial board and staff, especially Michelle Carpentier, Russell Sherman, and Jen Won, for their diligent work in bringing these Articles to their final published form. We also owe a special debt of gratitude to our Assistant Symposium

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<sup>4</sup> LAUREN E. GLAZE & THOMAS P. BONCZAR, U.S. DEP'T OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES, 2010 (Nov. 2011), available at <http://www.bjs.gov/content/pub/pdf/ppus10.pdf>.

<sup>5</sup> TRACEY KYCKELHAHN, U.S. DEP'T OF JUSTICE, JUSTICE EXPENDITURES AND EMPLOYMENT, FY 1982–2007—STATISTICAL TABLES (Dec. 2011), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/jee8207st.pdf>.

<sup>6</sup> Compare the 9.5 million people addressed above with the 11.9 million people employed in the manufacturing sector. See *Manufacturing: NAICS 31-33*, U.S. DEPARTMENT OF LAB., <http://www.bls.gov/iag/tgs/iag31-33.htm#workforce> (last visited Nov. 24, 2012).

<sup>7</sup> *World Prison Brief: United States of America*, INT'L CENTRE FOR PRISON STUD., [http://www.prisonstudies.org/info/worldbrief/wpb\\_country.php?country=190](http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=190) (last visited Nov. 24, 2012).

<sup>8</sup> As of 2007, the combined “cost of the nation’s police protection, corrections, and judicial and legal services was \$228 billion,” or \$755 per resident. See KYCKELHAHN, *supra* note 5, at 2.

<sup>9</sup> See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW* (2010); Symposium, *Overcriminalization: The Politics of Crime*, 54 AM. U. L. REV. 541 (2005).

<sup>10</sup> Ronald J. Allen, *Opening Remarks*, 100 J. CRIM. L. & CRIMINOLOGY 635, 635 (2010).

Editors, Robert Crane and Daniel Ophardt, who helped organize our live Symposium on January 27, 2012.

