INTRODUCTION

Mark Filip*

This symposium publication of the *American Criminal Law Review* ("ACLR") marks the journal's fiftieth anniversary, and there is much to celebrate. In 1962, Robert Kingsley—then the dean of the University of Southern California Law School and soon-to-be appointed to the California bench—introduced the inaugural edition of the ACLR, known at the time as the *Criminal Law Quarterly*. Dean Kingsley's aims for the journal were self-describedly modest: to offer a few articles in each issue that would provoke thinking while also providing "some practical value in your daily practice."[1] Less than a decade later, in 1971, Samuel Dash—already a renowned professor at Georgetown Law School and soon-to-be the Chief Counsel of the Senate Watergate Committee—announced the relocation of the ACLR to Georgetown. Once again, the publication's aims were set out with modesty: Professor Dash intended for the ACLR to be organized around problem areas in the criminal law; in so doing, it would "provide a forum for commentary" while also serving "as a tool for the practitioner."[2]

Over the ensuing decades, through the pursuit of these humble aims, great work has emerged from this journal—work made all the more significant when considered against the backdrop of other developments in the legal publication field. Recent figures out of Washington and Lee University's Law Journal Rankings Project indicate that, by the end of 2012, there were nearly 1,700 scholarly legal publications in existence.[3] This count has grown exponentially over the past few decades as sources of written legal scholarship have proliferated both in print and, lately, online. Somewhat counterintuitively, this growth has been matched by a rise in critiques of the fundamental value of academic journals in the legal field. Critics have bemoaned what they perceive as a growing chasm between the output of the

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* Mark Filip is a partner at the Chicago headquarters of Kirkland & Ellis LLP, where he leads the firm's government enforcement defense and internal investigations group. Before joining Kirkland, Mark served as the Deputy Attorney General of the United States from 2008–2009 following his unanimous confirmation by the Senate; Mark also served as the acting Attorney General of the United States through mid-February 2009. From 2004–2008, Mark sat as a federal district judge in the Northern District of Illinois following his unanimous confirmation by the Senate. Prior to his judicial commission, Mark spent several years as an Assistant United States Attorney in Chicago. He has also taught extensively in the field of criminal law, including at the University of Chicago Law School. Mark is a graduate of Harvard Law School, where he was an editor of the *Harvard Law Review*.

1. Robert Kingsley, *Notes*, 1 CRIM. L. Q. 1 (1962).

2. Samuel Dash, *Introduction*, 10 AM. CRIM. L. REV. 1 (1971).

3. *See Law Journals: Submissions and Ranking, 2005–2012*, WASHINGTON & LEE U. SCH. L., http://lawlib.wlu.edu/LJ/ (last visited Nov. 11, 2013).

journals and the practical needs of actual practitioners.[4] Put differently, there has been a great questioning as to whether the sort of practitioner-oriented goals championed by Dean Kingsley and Professor Dash are still facilitated by the traditional arrangement of scholarly publishing in the legal Academy.

Yet through this tumult of increasing publications and existential critiques, the ACLR has emerged in a position of preeminence. As Robert Muse noted in his keynote speech this past March at a dinner celebrating the ACLR's fiftieth anniversary (published in this volume as "In Pursuit of Simple, Ordinary Justice"), despite the growth in the number of journals, the ACLR has become *the* most-cited criminal law review in judicial opinions for a period from the present back through the whole of the last decade.[5] This is a tremendous achievement, consonant with the ACLR's original objective of serving as a practitioner's guidepost and reflective of the ongoing value of the work being done under the journal's auspices.

This issue of the ACLR is devoted to the topic of federal corporate criminal law. This is no mean task: as Julie O'Sullivan describes in her piece on the DOJ's corporate charging policy, the number of federal criminal statutes has grown so large as to be almost impossible to count with precision, and the number of federal criminal regulations may be as high as 300,000.[6] At the level of the individual, this numerosity of penal possibilities is daunting; at the corporate level, where multiple, sometimes overlapping doctrines can each be used to trigger criminal liability to a corporation and its employees, the array of risks faced by a potential corporate criminal defendant can quickly become even more complicated.[7]

To address this important subject matter, the ACLR has brought to bear a

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4. *See, e.g.*, Richard A. Posner, *Against the Law Reviews*, LEGAL AFF., Nov.–Dec. 2004, at 57, 57–58 ("The result of the system of scholarly publication in law is that too many articles are too long, too dull, and too heavily annotated, and that many interdisciplinary articles are published that have no merit at all."); Walter Olson, *Abolish the Law Reviews!*, THE ATLANTIC, July 5, 2012, http://www.theatlantic.com/national/archive/2012/07/abolish-the-law-reviews/259389/. *But see, e.g.*, Whit D. Pierce & Anne E. Reuben, *The Law Review Is Dead; Long Live the Law Review: A Closer Look at the Declining Judicial Citation of Legal Scholarship*, 45 WAKE FOREST L. REV. 1185 (2010). Of course, this complaint is not without historical antecedents. *See, e.g.*, Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936); *see also, e.g.*, Fred Rodell, *Goodbye to Law Reviews—Revisited*, 48 VA. L. REV. 279 (1962). However, the vociferousness of the critiques has grown mightily in recent years.

5. Robert Muse, *In Pursuit of Simple, Ordinary Justice*, 51 AM. CRIM. L. REV. 317, 318 n.2 (2014); *see also* Tracey E. George & Chris Guthrie, *Symposium: An Empirical Evaluation of Specialized Law Reviews*, 26 FLA. ST. U. L. REV. 813, 831 (1999) (demonstrating high "author-prominence" rating for ACLR during 1990s).

6. Julie R. O'Sullivan, *How Prosecutors Apply the "Federal Prosecutions of Corporations" Charging Policy in the Era of Deferred Prosecutions, and What That Means for the Purposes of the Federal Criminal Sanction*, 51 AM. CRIM. L. REV. 29, 34 & n.16 (2014) (citing Richard J. Lazarus, *Meeting the Demands of Integration in the Evolution of Environmental Law: Reforming Environmental Criminal Law*, 83 GEO. L.J. 2407, 2441–42 (1995)).

7. Irwin Schwartz, *Toward Improving the Law and Policy of Corporate Criminal Liability and Sanctions*, 51 AM. CRIM. L. REV. 99, 100–101 (2014); *cf.* Larry D. Thompson, In-*sourcing Corporate Responsibility for Enforcement of the Foreign Corrupt Practices Act*, 51 AM. CRIM. L. REV. 199, 213–15 (2014) (describing negative effects of uncertainty on corporate leadership due to lack of guidance regarding FCPA enforcement and attendant failures to optimally invest in compliance).

diverse, talented assemblage of authors. The depth of experience and insight set out in the articles that follow surely reflect the journal's preeminent role in the field of criminal law. Moreover, the perspectives presented—often in the form of bold, challenging calls for reform—demonstrate the ACLR's commitment to its original aims of serving as a place where difficult issues in the criminal law are addressed, thought-provoking analysis is encouraged, and the practical benefits of considering these issues are championed.

In the pages that follow, John Hasnas and Julie O'Sullivan consider the wisdom (or imprudence) of the underlying policy goals that inform the DOJ's current corporate charging guidelines—the former through the lens of the DOJ's policies as they *actually are*, the latter through the lens of the DOJ's policies as the Department *perceives them to be*.[8] Applying broader frameworks, the practitioners Joshua Greenberg and Ellen Brotman and then Irwin Schwartz discuss the legal doctrines that compose the current corporate criminal liability environment and propose a series of reforms to achieve greater compliance benefits and to reduce corporate uncertainty.[9]

In a trio of related articles, Barry Pollack and Anne Reisinger, Nicole Sprinzen, and former Deputy Attorney General Larry Thompson explore various facets of the Foreign Corrupt Practices Act.[10] As Deputy General Thompson notes, "[t]he Justice Department has recently made enforcement of the FCPA its top priority—'second only to fighting terrorism.'"[11] Given the centrality the DOJ will afford to FCPA enforcement for the foreseeable future, these three articles take on particular import both as critiques of the current regime and proposals for reform.

The last set of articles consists of four fascinating contributions regarding corporate compliance—particularly vis-à-vis the creation of ethical organizational cultures. To do this, Robert Bies, Scott Reynolds, Tom Tyler, and Gary Weaver draw on lessons from diverse fields including industrial psychology, applied ethics, and personnel management.[12] These articles are particularly fine examples

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8. John Hasnas, *A Context for Evaluating Department of Justice Policy on the Prosecution of Business Organizations: Is the Department of Justice Playing in the Right Ballpark?*, 51 AM. CRIM. L. REV. 7 (2014); O'Sullivan, *supra* note 6, at 29.

9. Joshua D. Greenberg & Ellen C. Brotman, *Strict Vicarious Criminal Liability for Corporations and Corporate Executives: Stretching the Boundaries of Criminalization*, 51 AM. CRIM. L. REV. 79 (2014); Schwartz, *supra* note 7, at 99.

10. Barry J. Pollack & Annie Wartanian Reisinger, *Lone Wolf or the Start of a New Pack: Should the FCPA Guidance Represent a New Paradigm in Evaluating Corporate Criminal Liability Risks?*, 51 AM. CRIM. L. REV. 121 (2014); Nicole H. Sprinzen, Asadi v. GE Energy (USA) L.L.C.*: A Case Study of the Limits of Dodd-Frank Anti-Retaliation Protections and the Impact on Corporate Compliance Objectives*, 51 AM. CRIM. L. REV. 151 (2014); Thompson, *supra* note 7, at 199.

11. Thompson, *supra* note 7, at 203 (quoting Joseph W. Yockey, *Solicitation, Extortion, and the FCPA*, 87 NOTRE DAME L. REV. 781, 782 & n.2 (2011)).

12. Robert J. Bies, *Reducing Criminal Wrongdoing Within Business Organizations: The Practical and Political Skills of Integrity*, 51 AM. CRIM. L. REV. 225 (2014); Scott J. Reynolds, *The Non-conscious Aspects of Ethical Behavior: Not Everything in the "Good" Organization is Deliberate and Intentional*, 51 AM. CRIM. L. REV. 245 (2014); Tom R. Tyler, *Reducing Corporate Criminality: The Role of Values*, 51 AM. CRIM. L. REV. 267

of the practical benefits that can be had from pursuing interdisciplinary approaches in legal scholarship.

Finally, in a standalone piece memorializing his March 2013 keynote address in celebration of the ACLR's fiftieth anniversary, Robert Muse weaves a history of the journal into a discussion of potential reforms for the American criminal justice system.[13] As he discusses his reform goals, Muse emphasizes the importance of individual ethical actors to the improvement of the legal system, relying on specific historical vignettes to advance his point. The result is a poignant synthesis of historical narrative and call for reform.

It is my honor to be able to introduce the fiftieth anniversary edition of the *American Criminal Law Review* and I commend you to the articles that follow.

MARK FILIP
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(2014); Gary R. Weaver, *Encouraging Ethics in Organizations: A Review of Some Key Research Findings*, 51 AM. CRIM. L. REV. 293 (2014).

13. Muse, *supra* note 5, at 317.