

OKLAHOMA LAW REVIEW

SYMPOSIUM: ENDING MASS INCARCERATION:
PHILOSOPHY, PRACTICE, AND POLICY

Foreword: Ending Mass Incarceration

Guha Krishnamurthi

ESSAYS

Nonfatal Death Sentences

Jacob Bronshter

Redundant Leniency and Redundant Punishment
in Prosecutorial Reforms

Stephanie Holmes Didwania

The Inherent Problem with Mass Incarceration

Raff Donelson

Getting to “Prisoner as Neighbor”

Avlana K. Eisenberg

Movement Constitutionalism

Brandon Hasbrouck

The Efficiency Mindset and Mass Incarceration

Thea Johnson

A Second Look for Children Sentenced to Die
in Prison

Kathryn E. Miller

Disability, Policing, and Punishment: An Intersectional
Approach

Jamelia Morgan

VOLUME 75

AUTUMN 2022

NUMBER 1

Except as otherwise expressly provided, the author of each article in this volume has granted permission for copies of that article to be made and used by nonprofit educational institutions, provided that the author and the *Oklahoma Law Review* are identified and that proper notice of the copyright is affixed to each copy. In all other cases, the author and the *Oklahoma Law Review* should be contacted directly.

Cite as: 75 OKLA. L. REV. ____ (2022).

The *Oklahoma Law Review* online edition, ISSN 2473-9111, is edited and compiled at the College of Law of the University of Oklahoma. Copyright November 2022 by the *Oklahoma Law Review*. Manufactured in the United States of America. The *Oklahoma Law Review* is published quarterly and is available online via Digital Commons, Westlaw, Lexis, HeinOnline, and the OLR website, <http://www.law.ou.edu/faculty-and-scholarship/journals/oklahoma-law-review>.

Selected back issues are available electronically free of charge via the *Oklahoma Law Review*'s Digital Commons page, at <http://digitalcommons.law.ou.edu/olr/>.

Editorial office: All editorial communications should be directed by email to mwaters@ou.edu, or by regular mail to the Editor-in-Chief, *Oklahoma Law Review*, University of Oklahoma College of Law, 300 Timberdell Road, Norman, Oklahoma 73019.

UNIVERSITY OF OKLAHOMA COLLEGE OF LAW

ADMINISTRATION

Katheleen Guzman, B.A., J.D., LL.M., *Dean of the College of Law, Director of the Law Center, Fenelon Boesche Chair of Law, and MAPCO/Williams Presidential Professor.*

Andrew M. Coats, B.A., J.D., *Dean Emeritus, Director Emeritus, and Samuel Roberts Noble Foundation Presidential Professor.*

Melissa Mortazavi, B.A., J.D., *Associate Dean for Academics and Professor of Law.*

Jennifer Needham, B.A., J.D., *Assistant Dean of Students.*

Joseph Thai, B.A., J.D., *Associate Dean for Research and Enrichment, Glenn R. Watson Centennial Chair in Law, and Presidential Professor.*

Stanley L. Evans, B.B.A., M.B.A., J.D., *Assistant Dean Emeritus.*

Gail Mullins, B.S., J.D., *Associate Dean of Graduate Programs and Experiential Learning, and Assistant Professor of Law.*

Laura Palk, B.A., J.D., *Assistant Dean of Development and Alumni Affairs, Adjunct Professor of Law.*

Carol Booth, B.A., *Director of Communications.*

Kenton Brice, B.B.A., J.D., M.S., L.S., *Interim Director of the Law Library and Director of Technology Innovation.*

Alicia Currin-Moore, B.A., J.D., *Director, Office of Career Development, and Adjunct Professor of Law.*

Darin Fox, B.A., J.D., M.S., *Director of Accreditation and Reporting.*

Angie Hockett, B.B.A., *Director of Financial Services.*

Anna Inhofe Hull, B.A., J.D., *Director of Advancement, OU Foundation.*

Peter C. Kraemer, B.A., M.A., M.A., *Director of Faculty Support.*

Amy Pepper, B.A., J.D., *Director, OU Legal Clinics, Assistant Professor of Clinical Education.*

Sunny Rowland, B.S., J.D., *Director of Academic and Bar Support, and Director of Legal Assistant Education.*

Jim Shuster, A.A.S., B.S., M.B.A., *Director of IT Infrastructure.*

Katie Spencer, B.A., J.D., *Associate Director of Career Development.*

Michelle Stephens, B.A., J.D., *Executive Director of Development, OU Foundation.*

Maddie Farris, B.A., J.D., *Director of Admissions.*

Kayla Doiron, B.S., M.B.A., J.D., *Associate Director of Career Development.*

Elaine B. Bradshaw, B.M., M.A., M.L.I.S., *Assistant Director for Collections and Digital Products.*

Rebecca J. Lucas, *Registrar and Study Abroad Coordinator.*

Lisa Ross, *Executive Assistant to the Dean.*

Michael F. Waters, B.A., M.A., *Editorial Advisor for the Law Reviews.*

FACULTY

Owen L. Anderson, B.A., J.D., *Eugene Kuntz Chair in Law in Oil, Gas and Natural Resources Emeritus, and George Lynn Cross Research Professor Emeritus.*

Evelyn Aswad, BSFS, J.D., *Herman G. Kaiser Chair in International Law.*

Mary Sue Backus, B.A., M.A.T., J.D., *Associate Dean of Student Services, Robert Glenn Rapp Foundation Presidential Professor, and Hugh Roff Professor of Law Emeritus.*

Brenda H. Barnes, B.A., J.D., *Assistant Professor of Clinical Legal Education.*

Donald T. Bogan, A.B., J.D., *Thomas P. Hester Presidential Professor, and Frank Elkouri and Edna Asper Elkouri Professor in Law.*

Kara Bruce, B.A., J.D., *Professor of Law.*

Steven J. Cleveland, B.A., J.D., *Thomas P. Hester Presidential Professor, and Professor of Law.*

Andrew M. Coats, B.A., J.D., *Dean Emeritus, Director Emeritus, and Samuel Roberts Noble Foundation Presidential Professor.*

Steven S. Gensler, B.S., J.D., *Associate Dean for Academics, Gene and Elaine Edwards Family Chair in Law, and President's Associates Presidential Professor.*

Mark R. Gillett, B.A., J.D., LL.M., *Professor of Law Emeritus.*

Kathleen Guzman, B.A., J.D., LL.M., *Dean of the College of Law, Director of the Law Center, Fenelon Boesche Chair of Law, and MAPCO/Williams Presidential Professor.*

Taiawagi Helton, B.A., J.D., LL.M., *W. DeVier Pierson Professor of Law.*

Stephen E. Henderson, B.S., J.D., *Judge Haskell A. Holloman Professor of Law.*

Eric E. Johnson, B.A., J.D., *Earl Sneed Centennial Professor of Law.*

Kit Johnson, B.A., J.D., *Thomas P. Hester Presidential Professor of Law.*

Drew Kersten, B.A., J.D., LL.M., *Professor of Law Emeritus.*

F. Stephen Knippenberg, B.A., J.D., LL.M., *Floyd H. and Martha Norris Chair in Law Emeritus.*

Guha Krishnamurthi, B.S., M.S., M.A., J.D., *Associate Professor of Law.*

Peter F. Krug, B.A., M.S., Ph.D., J.D., *Herman G. Kaiser Foundation Chair in International Law Emeritus.*

Peter B. Kutner, A.B., J.D., *Hugh Roff Professor of Law Emeritus.*

Jon J. Lee, B.A., J.D., *Associate Professor of Law.*

Lubomir P. Litov, B.S., M.S., Ph.D., *Affiliate Associate Professor of Law.*

Brian McCall, B.A., M.A., J.D., *Orpha & Maurice Merrill Professor in Law.*

William J. McNichols, A.B., J.D., *Professor of Law Emeritus.*

Erin Means DeWalt, B.S., J.D., *Director and Assistant Professor of Legal Research and Writing.*

Roger Michalski, B.A., J.D., Ph.D., *Professor of Law.*

Frederick H. Miller, A.B., J.D., *Professor of Law Emeritus.*

Melissa Mortazavi, B.A., J.D., *Professor of Law.*

Gail Mullins, B.S., J.D., *Associate Dean of Graduate Programs and Experiential Learning, and Assistant Professor of Law.*

Daniel Nicholson, B.A., J.D., *Assistant Professor of Legal Research and Writing.*

Joyce Palomar, B.S., M.A., J.D., *Kenneth E. McAfee Chair in Law Emeritus, and Ada Lois Sipuel Fisher Presidential Professor.*

Alex Pearl, B.A., J.D., *Professor of Law.*

Tracy Hresko Pearl, B.A., M.Sc., J.D., *Professor of Law.*

Amy Pepper, B.A., J.D., *Director, OU Legal Clinics, Assistant Professor of Clinical Education.*

Robyn M. Powell, B.S., J.D., M.A., Ph.D., *Associate Professor.*

Carla D. Pratt, B.A., J.D., *Ada Lois Sipuel Fisher Chair in Civil Rights, Race, and Justice.*

Robert E.L. Richardson, B.A., J.D., LL.M., *Professor of Law Emeritus.*

Liesa Richter, B.S., J.D., *Floyd H. & Martha Norris Chair in Law, and Thomas P. Hester Presidential Professor.*

Theodore Roberts, B.S., J.D., *Edith Kinney Gaylord Presidential Professor, and Professor of Law Emeritus.*

Lindsay G. Robertson, A.B., M.A., Ph.D., J.D., *Faculty Director, Center for the Study of American Indian Law and Policy, Chickasaw Nation Endowed Chair in Native American Law, and Sam K. Viersen Jr. Family Foundation Presidential Professor Emeritus.*

Michael A. Scaperlanda, B.A., J.D., *Professor of Law Emeritus.*

Zachary M. Schmook, B.S., J.D., *Assistant Professor of Legal Research and Writing.*

Megan Wischmeier Shaner, B.S., J.D., *Arch B. & Jo Anne Gilbert Professor of Law, President's Associates Presidential Professor.*

Robert G. Spector, B.S., J.D., *Glenn R. Watson Centennial Chair in Law Emeritus.*
David Swank, B.A., J.D., *Dean Emeritus, and David Ross Boyd Professor of Law Emeritus.*
Murray Tabb, B.A., M.A., J.D., LL.M., *Judge Fred A. Daugherty Chair in Law, and David Ross Boyd Professor.*
Rebekah C. Taylor, B.A., J.D., *Assistant Professor of Clinical Legal Education.*
Rick Tepker, B.A., J.D., *Floyd & Irma Calvert Chair of Law and Liberty Emeritus.*
Joseph T. Thai, A.B., J.D., *Associate Dean for Research and Scholarship, Glenn R. Watson Centennial Chair in Law, and Presidential Professor.*
Stacey Ann Tovino, B.A., J.D., Ph.D., *William J. Alley Professor of Law.*

This publication is issued online by the University of Oklahoma College of Law as authorized by Interim Dean Katherine Guzman. It is available by subscription via Westlaw, Lexis, and HeinOnline, and at no charge via Digital Commons and the College of Law website.

OKLAHOMA LAW REVIEW

EDITED AND COMPILED AT THE COLLEGE OF LAW OF THE UNIVERSITY OF OKLAHOMA
AND PUBLISHED QUARTERLY

© Oklahoma Law Review, 2022

ROBERT L. REMBERT
Editor-in-Chief

SARAH M. SIMPSON (OLIVER)
Managing Editor

TINA CANNON
Executive Articles Editor

BAILEY BARNES
MADELINE M. COOK
AMY OLTMANN
*Note & Comment
Editors*

CONNOR ANDREEN
LAUREN BROWN
DEBORAH DAVIS
JENNIFER ISAACS
KAISA JOHNSON
SHELDON SMITH
Assistant Managing Editors

PAYTON ROBERTS
*Research Editor &
Candidate Mentor*

BLAINE BREWER
LAUREN BROWN
PAYTON ROBERTS
Judiciary Committee

SARAH B. CONLEY
HILARY PRICE
JAKE SEIDEL
Articles Editors

BLAINE BREWER
LYDIA BUTAY
HEATHER CRABILL
CHARLES JOHNSON
GARRETT REED
Assistant Articles Editors

REBECCA BRAUN-HARRISON
Symposium Editor

GARRETT REED
*Topic Editor
& Candidate Mentor*

LYDIA BUTAY
PRICE ROWE
Staff Editors

CANDIDATES FOR MEMBERSHIP

JOSEPH M. ALBERT
SARAH ANDERSON
DEVRAAT AWASTHI
ADELAIDE J. BELL
BRIAN BOND
BROOKS CAIN
CATHERINE A. CAPE
MADDISON L. CRAIG
AYLA DELSO
KALEIGH EWING
LINDSEY GONZALEZ
TABITHA HANEY

LOGAN C. HIBBS
JENNIE HILL
ADAM H. HINES
KATHRYN IVERSON
MACY PERRY
ANGELA POWERS
NICHOLAS RINEHART
HALEY E. RUIZ
EMILY TUBB
ALLI VANDERVORST
MATTHEW WELBORN
RILEY WREN

OKLAHOMA LAW REVIEW

VOLUME 75

AUTUMN 2022

NUMBER 1

SYMPOSIUM: ENDING MASS INCARCERATION: PHILOSOPHY, PRACTICE, AND POLICY

Foreword: Ending Mass Incarceration	<i>Guha Krishnamurthi</i>	1
ESSAYS		
Nonfatal Death Sentences	<i>Jacob Bronsther</i>	7
Redundant Leniency and Redundant Punishment in Prosecutorial Reforms	<i>Stephanie Holmes Didwania</i>	25
The Inherent Problem with Mass Incarceration	<i>Raff Donelson</i>	51
Getting to “Prisoner as Neighbor”	<i>Avlana K. Eisenberg</i>	69
Movement Constitutionalism	<i>Brandon Hasbrouck</i>	89
The Efficiency Mindset and Mass Incarceration	<i>Thea Johnson</i>	115
A Second Look for Children Sentenced to Die in Prison	<i>Kathryn E. Miller</i>	141
Disability, Policing, and Punishment: An Intersectional Approach	<i>Jamelia Morgan</i>	169