
Prosecutorial Discretion in the Age of Over-Criminalization

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An article by [Timothy Perry](#), published in Bloomberg BNA's *White Collar Crime Report*, examines what legal commentators have called the overcriminalization of the US Code and discusses the best tactic for defense lawyers to tackle the problem, including by focusing less on critiques of Congress, and more on lobbying federal prosecutors on charging decisions.

Depending on whom you ask, the U.S. Code contains between 3,000 and 4,500 federal crimes. The sheer volume has prompted legal commentators to decry the steady expansion of federal criminal statutes over the last several decades as an "overcriminalization" of American society that threatens individual liberty and takes an unduly draconian approach to corporate misconduct. Typically, these commentaries blame Congress for the phenomenon. By focusing on Congress, however, legal observers spend too little time on the role of the executive branch and ignore the more immediate, practical question: How should prosecutors exercise their enormous discretion in an era when theories of criminal liability are so abundant? [Read the full article](#)