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Book Review

George J. McMonagle

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BOOK REVIEWS

*Reviewed by Honorable George J. McMonagle**

CRIMINAL SENTENCES—LAW WITHOUT ORDER, by Marvin E. Frankel. N. Y., Hill and Wang, 1973. 124 pp. \$5.95.

The author of the above book is a United States Judge serving in the Southern District of New York.

The book itself is relatively small — containing 124 pages.

It is written in an orderly and interesting fashion and does an excellent job of describing the various systems provided for the imposition of criminal sentences, and the faults and evils of each. Federal procedures are chiefly discussed, but the book includes suggestions which the author feels will alleviate some injustices that result from sentencing in both the state and the federal courts.

What might be said to be the theme of the book is contained in the following passage:

My basic premises about sentencing includes a firm conviction that we in this country send far too many people to prison for terms that are far too long.

Illustrations of disparities in sentences are contained in a quotation from former Prison Director Bennett which is contained in a 1964 document provided to the United States Senate:

Take, for instance, the cases of two men we received last spring. The first man had been convicted of cashing a check for \$58.40. He was out of work at the time of his offense, and when his wife became ill and he needed money for rent, food, and doctor bills, he became the victim of temptation. He had no prior criminal record. The other man cashed a check for \$35.20. He was also out of work and his wife had left him for another man. His prior record consisted of a drunk charge and a nonsupport charge. Our examination of these two cases indicated no significant differences for sentencing purposes. But they appeared before different judges and the first man received 15 years in prison and the second man 30 days.

In one of our institutions a middle aged credit union treasurer is serving 117 days for embezzling \$24,000 in order to cover his gambling debts. On the other hand, another middle aged

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embezzler with a fine past record and a fine family is serving 20 years, with 5 years probation to follow. At the same institution is a war veteran, a 39-year old attorney who has never been in trouble before, serving 11 years for illegally importing parrots into this country. Another who is destined for the same institution is a middle aged tax accountant who on tax fraud charges received 31 years and 31 days in consecutive sentences. In stark contrast, at the same institution last year an unstable young man served out his 98-day sentence for armed bank robbery.

A review of the book from the viewpoint of an Ohio Trial Court Judge inclines this reviewer to a comparison of the system under which he operates with those of the Federal and other jurisdictions, giving consideration to the amendments embodied in the Ohio Criminal Code which became effective on January 1, 1974. The Ohio system — both present and future — merits a high rating by comparison with the others.

While Judge Frankel points out many instances where there were apparent gross inequalities in sentences, the author concedes that without almost inflexible periods of confinement for criminal violations, inequalities will naturally result because of the background, attitude, and approach of the individual judge toward either the criminal, the type of crime, or crime in general. Variances in sentences do exist because of a judge's particular background and training.

The most elementary function of a Judge consists of the exercise of discretion in matters submitted to him for decision. This includes sentencing for crimes. While the author does make suggestions for what might be described as a procedure for establishing a standardization of criminal sentences, he does not suggest the elimination of this most basic function of a judge, nor does he propose the changing of our system of jurisprudence or the manner by which a judge attains his office.

In discussing qualifications of judges, the author indicates the desirability of prior trial experience by a judge before ascending to the bench, but acknowledges that a large percentage of judges have had no real experience in the courtroom; that while he himself spent many years working as an appellate lawyer, he had managed to never face a jury as a lawyer.

The chapters containing the author's suggestions for reform, which he calls "Palliatives, Remedies, and Directions for Hope," contain several very novel suggestions which are worthy of thoughtful consideration, although the author concedes that none of his suggested procedures have ever been instituted in his own court.

It is finally the proposal of the author that some instrumentality — he suggests a Commission of Sentencing — be established by Congress which should constitute a permanent agency responsible for the studying of sentencing, corrections and parole, the formulation of laws and rules, and the actual enactment of rules. The makeup of the agency should require prestige and credibility, consisting of people of stature, competence, devotion, and eloquence, and including people from all branches of the arts and sciences together with former or present prison inmates. Judge Frankel bases his contention that justice would be best served by a commission so made up because the great reforms of the law have always required the active exertions of an informed constituency broader than the legal profession. The author states: "I am not the first to paraphrase Clemenceau and say the law is too important to entrust to lawyers and judges."

Ohio has taken many long steps forward in its treatment of crime and criminals. The Ohio General Assembly, after many years of study, has enacted, effective January 1, 1974, a new Criminal Code. The Supreme Court for the first time in history has promulgated rules of criminal procedure which became effective July 1, 1973. The indeterminate sentence which had been the Ohio rule for many years has been retained but with the granting to the trial court of some limited discretion in the pronouncement of minimal sentences and the imposition of fines.

Ohio's recent enactment in the field of crime and criminal procedures is, of course, not the all-time answer to present and future problems in those fields. Suggestions contained in *Criminal Sentences* may ultimately become part of the answer to the inevitable future demands for corrections and improvement in the administration of criminal justice. This book is a recommended reading for those persons who should maintain or inculcate a never-ending zeal for improvement in our criminal justice procedures. By "those persons" is meant all the people.

*Reviewed by Gregory D. Thatch**

THE STUDENT, THE COLLEGE, THE LAW, by
John G. Hill, Jr. and William T. O'Hara. N. Y., London,
Teachers College Press, 1972. 220 pp. \$8.50.

William T. O'Hara and John G. Hill, Jr. have in *The Student, The College, The Law*, summarized the law in several areas and collected the leading cases to set forth an anthology of opinion and law

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