

CRIMINAL SENTENCES: LAW WITHOUT ORDER. By Marvin E. Frankel. New York: Hill and Wang, Pp. 124. 1973. Price \$5.95.

In this refreshingly brief, yet vibrantly stimulating book, Judge Marvin E. Frankel of the Federal Bench in the Southern District of New York dissects many of the evils of current sentencing practices in the United States, while suggesting changes in both the faulty assumptions and the inappropriate procedures.

The book is divided into two highly dependent parts: "The Problems" and "Palliatives, Remedies and Directions of Hope." The first section focuses on the inappropriateness for current sentencing practices of the ancient Latin canon, *Nullem crimen, nulla Poena, sine lege*. This basic principle states that there can be no criminal act and no punishment for the act unless there is a law by which both are specified. A primary thesis of Frankel is that while there are laws relating to the criminal act, punishment is meted out (i.e. sentencing) without similar legal guidelines. This statutory void has evolved through attempts to individualize sentences, but in the absence of appropriate legislation has led to such individualization being done poorly and at the cost of equal protection. Among the factors Frankel sees as contributing to dubious sentencing practices are: (1) judges whose law school curricula offer "substantially nothing" relevant to the problems of sentencing; (2) the overly fast and superficial process of sentencing; and (3) the wall of silence which surrounds sentencing.

If the ills of current sentencing practices which Frankel outlines do not appear novel, many of his suggested remedies are. The first potential cure considered is that of sentencing institutes where judges come together to hear presentations about the law and to discuss the problems of sentencing. This possibility is dismissed as a poor prescription because "the basic evil is an absence of adequate law." Frankel feels that talking about sentencing difficulties has very little potential benefit because the more basic problem is the absence of a proper statutory specification of what the reasons and limits for sentencing should be. Therefore sentencing institutes function in a vacuum where little can be gained in the way of genuine reform. Likewise, Frankel sees indeterminate sentences as an unproductive method of basic reform. This position relies heavily on his convictions that (1) the treatment which is a necessary component of such sentences is almost always not available at the institutions to which the defendant is indeterminately sent and (2) in very few cases can specific treatments be proposed that have documented successes. Unfortunately, one of the situations in which Frankel views the indeterminate sentences as appropriate is the situation of the offender who is determined, by some undefined method, to be dangerous. In what is an otherwise solid statement, it is disheartening to see the ease with which Frankel blithely slips into a dependence on predictions of dangerousness as legitimate bases for differential detention/treatment.

Frankel directs attention for true reform to (1) a system of shared power for the individual trial judge and (2) the opening of sentencing decisions to appellate review. The shared power he suggests comes in the form of sentencing councils similar to those currently in use in the three federal Districts. These councils involve only judges, but instead of one, there are three that discuss actual decisions which still are made by the individual trial judge. As an alteration of such a totally judicial sentencing council, Frankel also sees merit in the suggestion for mixed sentencing tribunals involving judges, psychiatrists, psychologists, sociologists and educators. In addition to these councils, whether it is developed within current court structures or whether a special appellate division is established to handle these questions, Frankel urges that "the main thing is to have *some* system of open, thorough, straightforward review on appeal of the sentencing decision."

Frankel concludes with some specific proposals for lawmakers, all of which involve formalizing the reasons and methods of sentencing and their appellate review, and with an outline for a permanent commission on sentencing. This commission would (1) study sentencing, corrections and parole, (2) formulate revised procedural laws, and (3) enact these laws under the traditional checks of Congress and the courts. This commission would include a variety of professional and community members including prisoners and jailers, since, as Frankel paraphrases, "The law is too important to entrust to lawyers and judges."

Because Frankel's intended audience is the literate citizen, his jargon-free prose results in a deceptively easy book—deceptive because, while it could be read at one sitting, it more productively is read a chapter at a time with serious thought interspersed. This book deserves wide attention from professionals who might be involved in sentencing tribunals, from legislators and their constituents whose action in these areas is the aim of the book, and from those judges who under current conditions will remain ill-equipped to sentence.

HENRY J. STEADMAN, PH.D.
Albany, New York