

SANCTIONS,
SENTENCING, AND
CORRECTIONS

Law, Policy and Practice

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For those from whom we learned:

Francis A. Allen, John Biggs, Jr., Howard Gill, and Sir Leon Radzinowicz
and in memory of Charles B. Ferster.

*

PREFACE

This volume is about criminal sanctions—their origins, their objectives, the procedures for their imposition and the methods for their execution. This is not a book about “prisoner rights”, or correctional officers rights, or judicial rights. It seeks, instead, to present a comprehensive and balanced review of all the actors and procedures which affect sentencing and corrections.

Designed for use by both criminal justice and law school students, the materials for this casebook were selected and the editorial notes prepared with this combined audience in mind. The selections consist of statutes, court decisions, administrative regulations and reports, excerpts from actual criminal proceedings, research reports, policy papers, and criminological writings. The criminal justice student, whether graduate or undergraduate, will find in this book a sufficient number of selections for either an advanced or introductory survey of sentencing and corrections. For the law student, there is, similarly, an adequate amount of legal materials to permit either course or seminar use.

The readings were molded in an effort to present a balanced view of the existing law, the realities of practice, and the considerations of public policy. We believe, therefore, that this volume can meet the needs of the uninitiated student as well as those of the experienced practitioner taking part in continuing education. The combination of law, practice, and policy should permit also the utilization of this volume in conjunction with clinical as well as traditional academic courses.

The term “sanctions”, a somewhat non-traditional and neutral term, is utilized in the title because of our effort to steer clear of, or at least diffuse, such ideologically-tainted terminologies as “punishment” and “corrections”. Sanctions refer both to the process of sanction-selection or “sentencing” and the process of sanction-execution or “corrections”.

As editors, we hope that a new generation of instructors and students will join us in vindicating the sage comments of Robert McKay, former dean of the New York University Law School:

“The kingpin of the entire criminal justice system is the sanctioning process. It is also conceptually the most difficult. We understand how to go about defining crime, establishing police forces, and devising due process trial methods. What we do not seem to understand is the purpose (or purposes) of sanctions. Moreover, we do not seem to know why or when or how to sen-

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tence; we do not know who should not be imprisoned and who should and for how long.”¹

We view this volume as the second portion of the systematic study of the criminal process. Both criminal justice and law school programs now offer courses in “criminal procedure” which are usually weighed toward the practices and procedures of the law enforcement agencies. Few instructional programs or texts have devoted equal attention to the second part of criminal procedure—the practices and procedures of courts and administrative agencies concerned with the disposition of convicted offenders. We believe that no proper understanding of the criminal process is possible unless the issues of “policing” are followed by the problems of “sanctioning”. Increased public, professional, and judicial attention, as well as the outpouring of new legislation, make the process of criminal sanctioning an indispensable second part of any comprehensive survey of criminal procedure.

The scope and materials of this volume are designed for a three-hour credit course. Where time cannot be found for a course of this length, a two-hour course or seminar can be offered by eliminating two or three of this volume’s chapters. Those who wish to emphasize sentencing could omit Chapters Seven, Eleven, and Thirteen. For those who seek heavier coverage of corrections, Chapters Five, Six, and Seven could be excluded.

Committed to a true effort at wedding the three components of criminal sanctions—law, policy, and practice—we conclude this volume with Chapter Fourteen, devoted to practice cases. The nine selected cases will offer both students and teachers an opportunity for a simulated practicum. These cases, derived from American and Canadian practice, should aid in making the study of the criminal sanctioning process not merely an academic and intellectual exercise, but also a more personal and decision-making experience. The selected cases are excerpted from teaching manuals previously developed and tested out in training programs for judges and correctional administrators. A list of Suggestions for Further Readings further enhances the book.

The Teacher’s Manual which accompanies this volume is based on the authors’ research in the preparation of the manuscript, as well as their experiences in the use and testing of these materials. The Manual explains why materials were selected, the reasons for the order of presentation, and the issues which we hope would emerge in the class sessions.

* * *

We wish to acknowledge the contributions of the various organizations and individuals who helped make this book possible. Dean

¹ McKay, Robert; *It’s Time to Rehabilitate the Sentencing Process*, 60 *Judicature* 223-226 (1976).

PREFACE

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N. N. K.
E. H. Z.

Washington, D.C.
May, 1981

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