

# This Week's Citation Classic®

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Frankel M E. *Criminal sentences: law without order.*  
New York: Hill and Wang, 1973. 124 p.

The essay reported that judges were less bound by rules in sentencing than they were in fixing damages for a bent fender or a spoiled shipment of potatoes. The author urged that there should be a sentencing commission to propound sentencing guidelines, subject to legislative approval, to channel judicial discretion. [The *Social Sciences Citation Index*® (SSCI)® indicates that this book has been cited in over 275 publications.]

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Named as a federal district judge in November 1965, I soon came to have, among many other duties, the task of sentencing people convicted of federal crimes. It occurred to me on the first such occasion—which came within a week or two after I'd begun wearing a robe to work—that I had no experience or special knowledge whatever about the subjects of penology, criminology, sentencing philosophies, or any other pertinent learning. Nothing I had learned in law school bore very directly on the subject. I became aware very early that almost none of my judicial colleagues were better equipped.

I also learned instantly that federal judges, like most of those in the states, had enormous discretion in sentencing.

If a federal bank robbery defendant was convicted, he or she could receive a maximum of 25 years. That meant anything from 0 to 25 years. And where the number was set, I soon realized, depended less on the case or the individual defendant than on the individual judge, i.e., on the views, predilections, and biases of the judge. So the same defendant in the same case could get widely different sentences depending on which judge got the case. This struck me, as it still does, as the antithesis of a system of law. The rule of law calls for a body of impersonal rules, applicable across the board, binding on judges as well as everyone else.

So I worked up in this small book the idea of a sentencing commission and guidelines. The object is not to give everyone the same sentence for the same crime. Individual characteristics of defendants are still to be weighed but by weights to be approximated in the guidelines, not varying with judicial tastes.

I am pleased that the idea has been adopted in a number of states and in the federal criminal code as amended in 1984.<sup>1</sup> Without modesty, I think the book has been cited because it says things that lawyers and judges, and human beings, knew all along but that needed a sharp restatement and proposal for reform nevertheless. Whether the reform will work remains to be seen. It is, at worst, however, a considerable improvement over the chaos of judicial discretion for which it substitutes.

The subject has recently been revised and brought up to date in an article on sentencing commissions and guidelines coauthored by me with Leonard Orland.<sup>2</sup>

1. Sentencing Reform Act of 1984. Comprehensive Crime Control Act of 1984 (PL 98-473). 12 October 1984.

2. Frankel M E & Orland L. Sentencing commissions and guidelines. *Georgetown Law J* 73:225-47. 1984.