



12 of 16 DOCUMENTS

Copyright (c) 2003 National Association of Criminal Defense Lawyers, Inc.  
The Champion

July, 2003

27 *Champion* 50

**LENGTH:** 1280 words

**COLUMNS:** BOOK REVIEW: SENTENCING, SANCTIONS, AND CORRECTIONS

**REVIEWED BY** ALAN J. CHASET, By Nicholas N. Kittrie, Elyce Zenoff & Vincent Eng with Mark Allenbaugh & MeLinda Fisher

Alan J. Chaset is a post-conviction lawyer in Alexandria, VA. He solicits manuscripts for the Grid&Bear It column and is an original member of The Champion Advisory Board. Alan J. Chaset 910 King St. Suite 200 Alexandria, VA 22314 703-683-3375 Fax 703-684-9017 E-MAIL fedsentence@starpower.net

**TEXT:**

[\*50] Foundation Press (New York, New York 10014, 2002) \$ 79.50 - 1315 pages, ISBN: 1-58778-970-5

If you were like me, prominent on your bookshelf in your first legal office were the various casebooks you had slaved over and seriously underlined during your law school days. And, again, if you were like me, you rarely -- if ever -- had an opportunity to crack open or consult any of those texts and none of those items now appear on the [ILLEGIBLE WORD] shelving in your current office. So why, you might ask, am I here reviewing and touting a casebook.

According to the publisher, *Sentencing, Sanctions, and Corrections* is the "first comprehensive, systematic and contemporary collection of state and federal materials to address both the sentencing and correction stages of the criminal process. Though originally published for the law school market [this is the second edition], this book will also provide the district attorney, the criminal defense practitioner or the corrections professional with invaluable desktop references in the form of extensive background material, edited significant cases from the U.S. Supreme Court as well as lower federal and state courts, and extensive author-created notes on complex issues." While it appears to do or provide all of that, my enthusiasm for the book relates more to what I feel is lacking in many of my colleagues' approach to the sentencing phase of our representation.

In that regard and particularly in a guideline or determinative sentencing environment, it appears to me that most criminal defense attorneys are content once they have learned that *United States v. Broderson* is the key case in the Second Circuit on the question of abuse of trust or once they have identified FPC Allenwood as the minimum security facility in the Northeast Region where the Residential Drug Treatment is offered. The preparation of a detailed Sentencing Memorandum that affords the sentencing judge with an in-depth portrait of the soon-to-be-incarcerated offender is a tool/document of the past. Unless you hire a sentencing specialist or a post-conviction organization to prepare a nicely bound humanizing package of letters of praise, lists of accomplishments, and examples of worth to family, friends and the community, the sentencing, sanctions and corrections effort seems to end once the objections letter or departure motion have been authored.

I passionately believe that, for most of our clients, we should be doing something more and I see this text as providing a good starting place.

For instance, for those of you who might want to add a little bit of sentencing philosophy or to afford the decision maker with a reference to the current research on the particular topic, Professor Kittrie's book is an

invaluable resource. While clearly still a law school textbook and not a how-to tool, with the aid of a marvelously helpful Table and Summary of Contents and with a little creative page-turning, one can find a quote from Confucius on the role of shame and restorative justice, identify a law journal article discussing how such can deter crime and then cite a variety of relevant initiatives currently being studied in several jurisdiction around the country. While obviously not applicable or needed in every case, I believe that a frequent perusal of the various subject areas herein can serve to spark the thinking process concerning the theme or direction of your sentencing presentation. It can help expand that thinking process about the rationale or bases for certain guideline enhancements or adjustments and afford opportunities/examples to demonstrate how the offense and offender characteristics in your case do not match the particular harm sought to be sanctioned by the section or paragraph in the Sentencing [\*51] Guidelines. And I find it rich with examples or information with which to craft or augment departure efforts, referencing matters not adequately addressed by the authors of the guideline system.

The casebook on *Sentencing, Sanctions, and Corrections* deals with a broad range of procedural and substantive questions. As to the former, topics concern the roles of judges and juries in sentencing, the duties of prosecutors, defense counsel and probation officers both prior to and during sentencing, and the laws and practices regarding various forms of sanctions (incarceration, probation, fines, community service, diversion, and therapeutic programming). There is a separate chapter on the role of plea bargaining in the sentencing process as well as a full section on various aspects of the sentencing hearing. On the substantive side, questions addressed include the objectives of sanctions, the responses to particularly severe offenses (homicide, rape, terrorism) and the differences in the treatment of various groups of offenders (racial and ethnic minorities, the mentally ill, juveniles, women, the elderly). Importantly, there is an exquisitely detailed 25-page table of contents that walks the reader through and directs your attention to those various topics (and the many others) within the text's 15 chapters.

For instance, my eye was drawn to a number of items related to White Collar Offenses. I found some interesting articles about the origin of that term and some discussion of how the public response to these crimes had been changing, a subject that clearly resonates at the time now when the Department of Justice is attempting to dramatically ratchet up the potential penalties for frauds and thefts -- pushing the punishment envelope much further than the U.S. Sentencing Commission appears willing to go. Among the materials was a 1976 *Wall Street Journal* piece that quoted then Bureau of Prisons' Director Norman Carlson on the quantum of imprisonment needed to deter white-collar offenders: "I don't care if it's 60 days or 6 months or what it is, I don't think it has to be a long sentence ... I think that most offenders are gambling in a sense, and if they knew that their chances for apprehension and conviction were pretty great, that would have far more impact than the threat of a vague 25 or 50 year sentence hanging over their heads." I can definitely see many instances where that kind of language (and the philosophy underlying it) will serve to emphasize an "overstatement of harm" departure argument in a mail fraud case.

Obviously (or is it hopefully), there remains a significant niche for the individual lawyers and organizations who hold themselves out as experts in the Sentencing Guidelines or who say that they can provide a Trip-Tik to the intricacies of the Federal Bureau of Prisons. There are, however, viable alternatives for the typical practitioner to expand and augment the scope and efficacy of his/her sentencing advocacy. I highly recommend adding *Sentencing, Sanctions, and Corrections* to your post-conviction library and keeping it handy next to the guidelines and case law summaries. And I recommend referencing its contents frequently during the course of your representation as you get a better feel for how the offense and offender characteristics in your case may eventually impact the sanctions to be meted out and as you get a better sense for how you plan to address (and use) those matters at that juncture in the proceedings.

And even if you want to continue to hire Marcia or Herb or Alan (or me for that matter), the more fluent you become in the language of sentencing and corrections -- the more aware you become about the data research and commentary contained in this text -- the better you will assist our efforts and the better you will represent your clients.

### **Legal Topics:**

For related research and practice materials, see the following legal topics:  
Criminal Law & Procedure Sentencing Alternatives Community Confinement Criminal Law & Procedure Sentencing Fines Criminal Law & Procedure Postconviction Proceedings Imprisonment

### **GRAPHIC:**

PICTURE, no caption