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## Preface

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The fairness and effectiveness of the criminal justice system were great concerns of the Honorable Harold Baer, Jr. over the course of his career, especially when it came to the penalties imposed on criminal defendants, with which he had much familiarity. He was an assistant United States attorney in the office of the United States Attorney for the Southern District of New York. He served as chief of the Criminal Division in that office. Later, he saw criminal justice from different angles as well as an attorney in private practice, as executive director of the Civilian Complaint Review Board in the City of New York, and as a member of the Mollen Commission to investigate police corruption in the City. After service as a justice of the Supreme Court of the State of New York for a decade, he became a United States District Court judge for the Southern District of New York and served in that capacity for two decades.

As a U.S. district judge, Judge Baer handled many criminal cases, presided over many trials in such cases, and took many pleas. He was called upon, therefore, to sentence many convicted defendants. In compliance with the law, he had to sentence many defendants to terms of imprisonment or, if the law permitted and the facts called for such, to other forms of criminal sanction. His goal and his duty in this part of his work as a judge were to carry out the law as enacted by Congress and in accordance with the directions of the higher courts, and to act to promote fairness and justice for defendants, victims, and society in every case.

Sentencing is among the most weighty responsibilities of a U.S. district judge, or any judge who handles criminal cases. Even when the guilt of the defendant is undoubted and there is little to be said in his favor, it is a heavy task to hand down a sentence that may require an individual to spend many years in prison. The law may make very clear what the sentence must be and the judge may therefore act without doubt about his or her course, but ordering the incarceration of a human being is never a small thing. The conscientious men and women who wear the robes of a U.S. district judge or a state court judge can never find this an easy function to carry out. Nor should it be.

Undoubtedly, the burden of sentencing weighed upon Judge Baer, as it does on other judges. He clearly took the role very seriously and gave much thought to the sentencing process—what is the best balance among the various aims of criminal punishment; how well does the law achieve those aims; whether sentences are too harsh; whether the law appropriately calls for incarceration; whether it

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is possible in particular cases to deter, incapacitate, and protect society, but also attempt seriously to rehabilitate offenders whose lives may be salvaged, thereby helping society as well by reducing the prospects that the offender will return to the ways of crime.

Judge Baer's thinking on these matters led him into some serious research and to the preparation of the book that follows. He surely wrote this book with the hope that it might, in some small way, contribute to public reflections about the fairness and effectiveness of our society's approach to the punishing of criminal defendants.

Judge Baer passed away unexpectedly in 2014, leaving behind the manuscript of this book. The manuscript as he left it was substantially, but not entirely, complete. The footnotes and text have been updated. In addition, editing was required to put the manuscript into final form as it is believed Judge Baer would have wished it to be. Finally, the editor prepared the Introduction and the final chapter. These summarize the contents of the book and the arguments made in Chapters 1 through 5.

The Editor