

# Business

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Herb Hoelter, a pioneer in the little-known field of sentence consulting, or "post-conviction mitigation," at work yesterday in his Baltimore office.

## Not-so-hard-time

### Consultants help well-to-do avoid tough sentences

By Tatsha Robertson  
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GLOBE STAFF

**N**EW YORK — Herb Hoelter persuaded a judge that Leona Helmsley's husband was so sick that her sentence should be reduced so she could care for him. Hoelter created a community-service program for Michael Milken, helping to reduce the former junk bond king's sentence. By detailing the illnesses of A. Alfred Taubman, the former Sotheby's chairman convicted of fixing auction prices, he helped get the tycoon into a federal medical center rather than maximum security prison.

Hoelter is a pioneer in the little-known field of sentence consulting, or "post-conviction mitigation," where business is booming with hundreds of white-collar offenders like Martha Stewart and Andrew Fastow, Enron Corp.'s former chief financial officer, facing prison time or some sort of punishment. Former social workers such as Hoelter, and lawyers, criminologists, and former white-collar criminals themselves, are hired by attorneys of the well-to-do to develop plans to persuade judges to mete out lighter sentences to their clients. Barring that, they work to help new convicts gain assignments to facilities that may suit their interests, such as prison camps with book clubs or tennis courts or Kosher cafeterias.

"We are like the third-base coaches. We don't run the team," said Hoelter, cofounder and chief executive of the National Center on Institutions and Alternatives, a nonprofit group in

Baltimore that explores alternatives to traditional prison sentences. While his group deals with all sorts of cases, Hoelter now focuses on white-collar defendants. "We are just trying to help them get around the bases."

But a federal crackdown on financial crimes fueled by anger over scandals involving Enron and WorldCom Inc. have made their jobs tougher. Two years ago, President Bush created the Corporate Fraud Task Force to investigate and prosecute financial crimes. Since then, there have been 250 fraud convictions, including judgments against 25 former chief operating officers, according to the Justice Department. Recent legislation has stiffened sentencing guidelines and limited federal judicial discretion in sentencing white-collar criminals.

"Across the board the department said the sentences should fit the crime," said Bryan

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HERB HOELTER, cofounder, National Center on Institutions and Alternatives

## Helping the well-to-do get a jail break

Sierra, US Justice Department spokesman. “In the past, there was a perception that white-collar criminals could avoid prison time but I think that notion has been dispelled.”

Sierra points to a number of lengthy sentences handed down recently to executives as proof that white-collar criminals should no longer expect special treatment: Last week, James Olis, the former executive at Dynegy Inc., was sentenced to 24 years in prison. Fastow, the former Enron executive, entered a plea agreement that likely will result in a 10-year sentence.

Alan Chaset, a post-conviction lawyer, said the crackdown on sentencing has indeed made his work more difficult but not impossible. Chaset, like Hoelter, refuses to discuss his current client list.

“The kinds of creative things I do and have done for years, now cold water has been thrown on that,” Chaset said.

“What it means is that you really have to put more effort into making sure the rules that exist are followed correctly and spend more time trying to be creative to find the opportunities to get something different, something less for your client.”

Still, consultants say they are busy as ever. It is not clear how many sentencing consultants are out there. Chaset said there might be hundreds focusing on mitigating capital cases but only two dozen or so who specialize in mitigating mostly federal white-collar cases.

Some have begun to market their skills on glossy websites. David Novak, who served 10 months in prison for mail fraud and now serves as a top sentence consultant, boasts on his website that if the organization doesn’t get you into the residential drug abuse program or the Intensive Confinement Center — which he explains normally results in a 12-month sentence reduction — then, in some



Herb Hoelter chatted on the phone yesterday in his Baltimore office. “We are just trying to help them get around the bases,” he said of his white-collar clients.

circumstances, “David Novak Consulting will refund one half of your fee.”

Ted Poretz, a former New York district attorney, said the use of sentencing consultants is much more common in federal cases than in state cases where judges have more discretion.

In the case of Stewart, who was convicted of multiple counts of conspiracy last month in federal court and awaits sentencing in June, Chaset said the thrust of his pitch to the judge would be that Stewart’s character, background, and offenses warrant punishment on the low end of the federal sentencing guidelines. She could face 10 to 16 months in prison. Then, Chaset, a specialist on sentencing guidelines, said he’d ask Stewart which of the two minimum security facilities near

her Connecticut home she’d prefer and ask the judge to recommend that federal prison officials assign her there.

Legal specialists say that defense attorneys, who must focus on the technicalities of a given case, do not have the time to focus on the social background of a defendant, which can later help during sentencing. With a keen knowledge of sentence guidelines, consultants like Novak and Chaset use everything from a person’s mental health, his charitable background, and his religion as bargaining tools.

Stanley A. Twardy Jr., a partner at Day, Berry & Howard LLP in Stamford, Conn., said a sentencing consultant can help a defense attorney at a sentencing hearing “fashion a presentation to the court that’s

more effective. They can bring to the table those little nuances that can be very helpful.”

For Taubman, the former Sotheby’s chairman, Hoelter detailed Taubman’s years of community service and emphasized a laundry list of his ailments ranging from diabetes to hypertension in order to get the judge to recommend a one-year sentence at the federal medical center next to the Mayo Clinic in Minnesota.

In 1990, Milken’s attorney’s contacted Hoelter for help after Milken was sentenced to 10 years in prison. Hoelter emphasized the community service Milken could perform, and he argued that the sentence was out of line with other white-collar criminals. As a result, the 10-year sentence was reduced to two years followed by three years of community service in Los Angeles.

For Helmsley, recalled Hoelter, “hers was a more humane appeal. She ended having to serve some community service. . . . We documented what she had done in prison, and her husband Harry was severely ill. We made a kind of compassionate pleas for equity.”

“There are lot of intangibles,” said Novak. “Let’s say I am working with a client who has a mother or father who

is very infirm. We want to make sure that is noted in the record so when it came time for the bureau of prison to designate somebody, they might take that into account to keep them closer to home.”

Rooted in a movement advocating alternatives to prison sentences, the industry was pioneered in 1977 by Hoelter.

“There was a gap in the system. Judges were being presented with either a probation sentence or a prison sentence. We use to call it the aspirin or a lobotomy. We thought there was a lot of room for alternatives,” said Hoelter.

Half of his clients were poor, but the rich were constantly calling on Hoelter for help.

“You’ve got to have a Robin Hood type of a concept where you charge fees to people who can afford them but that allows you to use that money for indigent cases,” said Hoelter, who has trained thousands of public defenders and taught attorneys how to mitigate capital punishment cases.

Hoelter said he is not drawn to industry because of the large fees it can now command but because it still allows him to push for community service rather than prison for some offenders.

Still, part of a white-collar consultant’s job is to inform clients headed to prison that they shouldn’t expect Club Fed. While there are a variety of prisons, Novak warns that none are glitzy, and the Bureau of Prisons does not allow inmates to conduct business behind bars.

“They have absolutely no idea what is it they’re facing,” Novak said. “Unfortunately, they’ve heard a lot about ‘Club Fed’ and at the same time they have seen a lot of movies like ‘The Shawshank Redemption,’ so they are not quite sure whether to bring their golf clubs or they are just in fear for their lives.”

Hoelter said consultants do not use tricks to persuade judges to go lenient on their client, but he said a good consultant must understand the law and how it applies.

“There is no single kind of Perry Mason argument . . . that wins a sentence,” he said. “It’s invariably a combination of good arguments that add up to a good sentence.”

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