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MICHAEL WILLIAMSON • THE WASHINGTON POST

"The average white-collar criminal now gets prison," says sentencing consultant Herb Hoelter, and harsher guidelines are "nothing more than a political reaction." Hoelter helps arrange mitigated sentences for convicted white-collar citizens.

New business booms after white-collar crimes increase

By Don Oldenburg
THE WASHINGTON POST

Peter Max's "Statue of Liberty" print hangs in Herb Hoelter's office in Baltimore. It's signed by the world-famous pop artist, inscribed out of gratitude.

And well it should be: Six years ago Max pleaded guilty in federal court in Manhattan to tax evasion and conspiracy charges, admitting to trading art for more than \$1 million in real estate without paying income tax on the proceeds.

Max faced a maximum 10 years in prison and a \$500,000 fine. Even the minimum sentence then — four months behind bars — could have shut down his studio.

"His lawyer called and said, 'What can you do?'" recalls Hoelter, one of the nation's foremost "alternative sentencing consultants" whose specialty is the artful wangling of the federal guidelines that match crime to prison time. His job is to influence judges toward lenient sentences for his white-collar clients.

Knowing that U.S. District Judge Kimba Wood wouldn't let Max serve his sentence in a halfway house solely to keep his art business booming, Hoelter proposed that Max also do community service teaching art to disadvantaged children.

The judge bought it, sentencing Max to pay back taxes plus a \$30,000 fine, to serve two months in work-release and to perform 800 hours of community service in Harlem schools.

Max won't comment on his crime and punishment. But Hoelter says the artist turned the children's paintings into a magnificent 55-by-10-foot mural that now decorates a playground wall in Harlem.

"It was beautiful what he did," Hoelter says, calling the Harlem project a shining example of how flexibility in sentencing enabled a talented lawbreaker to repay society rather than rotting in the slammer.

What troubles Hoelter and other sentencing specialists is what would happen if Max were sentenced today: no Harlem art project, no creative alternative to a stretch behind bars.

The federal crackdown on book-cookers, insider traders,

tax evaders and other white-collar crooks — fueled by public outrage over WorldCom, Enron and other recent corporate scandals — is transforming the traditional white-collar punishment of prison-lite into hard time. Many consider this crackdown long overdue.

During the past year, Congress dramatically stiffened sentences for financial crimes, the Bureau of Prisons ditched halfway house treatment for white-collar criminals with short sentences, and the U.S. Sentencing Commission doubled some white-collar sentences to as much as 20 years. In April, President Bush signed into law a controversial bill designed to restrain federal judges from lessening sentences.

For sentencing specialists such as Hoelter, that's all bad news. Pointing upward, he sighs, "The guidelines only know one way to go."

The Beginning

Hoelter is the guy with the get-out-of-jail cards.

He is co-founder and director of the National Center on Institutions and Alternatives, which works for sentencing and prison reforms. The 450-employee nonprofit organization — headquartered in Baltimore with offices in New York, Boston and suburban Washington — pioneered the field of sentencing consulting for all kinds of defendants, from white-collar criminals to death-row inmates.

In 1977, after rewiring Pennsylvania's juvenile justice system, Hoelter and his mentor, juvenile justice guru Jerry Miller, founded NCIA to lobby for national sentencing reform. They soon were hearing from criminal defense lawyers seeking to tip the scales of justice in their clients' favor.

"There was no system before that," says Hoelter, whose edu-

cational background is in social work, not law.

One case led to another. By the early '80s, NCIA had started training public defenders in sentencing strategies. But of 15,000 cases NCIA has handled in the 25 years since, many of them have been of the highest profile, with names such as Ivan Boesky, Michael Milken, Dennis Levine and Marion Barry.

Though arguably controversial, sentence consulting has evolved into an expected part of white-collar cases, says Marc Mauer, executive director of the Sentencing Project, a Washington-based organization of sentencing mitigation specialists.

"The white-collar client has the best lawyers money can buy and they get the best sentencing specialists money

can buy," says Mauer.

Today there are more than 300 sentencing specialist firms nationwide.

Alan Ellis of Sausalito, Calif., got into the business in 1980 when, as a criminal defense lawyer, he "saw that court decisions were going against criminal defendants and, for most people, the key questions were how much time am I going to get and where am I going to do it."

Of the 6 percent of federal criminal cases that go to trial, the government prevails in 75 percent, says Ellis, whose client list includes John Walker Lindh and Lyndon LaRouche.

"There was a need out there," says Ellis, that wasn't being met by defense lawyers. "Most criminal defense lawyers are interested in cross-examining the snitch and delivering the closing argument that would bring tears to the jury's eyes," he says. "I was more interested in explaining to the judge who my client was and why he or she did it and why he or she was worthy of a break."

Back in his office, Hoelter explains how NCIA does that.

He pages through a two-inch-thick report on one of his cases: a 70-year-old charged with fraud: 20 pages of personal history, the history of his charitable works, the sentencing alternatives, and an explanation of why the judge should give the defendant a break — family matters, health matters, abuse problems — plus letters written on his behalf.

"If you're going to take somebody's life for three, four or five years," says Hoelter, "you have the obligation to know everything you can about the person, the crime, the circumstances and anything that was going on — and then make a fair decision."

"A lot of people view white-collar guys as these nefarious corporate thieves. There is certainly a lot of stuff that happens out there. But there but for the grace of God goes an awful lot of guys."

The Situation

Since being enacted in 1987, the federal sentencing guidelines have bloated to a thousand pages — a complexity of upward and downward variances judges can make in 150 crime categories.

"The guidelines were promulgated with the notion that fairness in sentencing would happen — the guy who robs a 7-Eleven for \$100 doesn't get hit for 10 years when the guy who robs the savings and loan for \$100 million gets probation," says Hoelter. "But now it's a disaster that has reshaped the entire federal judicial system" by taking discretion out of the judge's hands.

"Everybody goes to jail. There's now a presumption of incarceration," says Hoelter, adding that this has contributed to the federal prison population increasing from 30,000 in 1980 to 165,000 now.

He runs his finger down a column of codes and figures representing months in prison in the sentencing guidelines. "You can see that the number of zeroes are very few," he says. "The government firmly believes that white-collar defendants need to spend a lot of time in prison to learn their lessons. That makes our job all the more necessary."

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— Herb Hoelter
Sentencing consultant

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NEWS IN BRIEF

U.S. House approves ban on flag burning

WASHINGTON (AP) — In what Democrats called an annual GOP rite of spring, the Republican-controlled House passed an amendment to the Constitution to criminalize flag burning for the fifth time in eight years on Tuesday.

The one-line change to the Constitution — "The Congress shall have power to prohibit the physical desecration of the flag of the United States" — was approved by a 300-125 vote as a

pair of holidays approach — Flag Day next Saturday and Independence Day in July.

Senate passage is less likely. The constitutional amendment needs a two-thirds majority in the House and Senate and approval by three-fourths of state legislatures.

Burning an American flag shows disrespect for America and the majority of the American people approve of legally protecting Old Glory, supporters said. "If we allow its defacement, we allow our country's gradual decline," said Rep. Steve Chabot, R-Ohio.

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