

Criminal Defense Update



SENTENCING VIDEOS — A BRAVE NEW WORLD

BY

HERBERT J. HOELTER

CO-FOUNDER AND CEO, NCIA

FEBRUARY 2015

In the face of the *Booker* and other Supreme Court decisions, a client's personal history and characteristics have obtained a new relevance in the sentencing world. Since that decision, the courts can now consider an offender's lifetime of good deeds, service to the community, positive contributions to society, and their overall background. Therefore, as a focus of our work, we regularly assist defense attorneys in coordinating and providing the Court with reference letters from the client's family, friends, business associates, and charitable works organizations. While these reference letters provide the judge with quality information relevant to the client's personal history and characteristics, we've developed a new and innovative method for illustrating the emotion and passion that these references feel for the client.

The submission of a sentencing video to the judge is a powerful tool that can convey the emotion and sentiments of a client's reference that cannot be felt in a letter. A video allows those who wrote inspiring letters for the defendant's good works and values to vocalize their thoughts and emotions and allow the judge to really get a glimpse at the impact the client has had on people and communities. A video captures the most meaningful stories, anecdotes, and representations of the client's true character. The court doesn't just get a written synopsis, but gets to hear, feel, and bear witness to the client's character. A video, combined with the submission of letters, creates a powerful reflection of the client's personality and character that the judge can observe through firsthand accounts.

The video submission is a collaborative effort between NCIA, the defense attorney, the videographer, the client, and those whose stories best illustrate the message we want to deliver to the judge. Family members, professional contacts, personal friends, volunteer contacts and employees are often the best sources to interview. These references can best highlight intimate narratives about the client's personality and acts of humanity that may be unknown to others. A video can emphasize the raw emotion that these references exude when conveying their degree of gratitude or appreciation towards the client or the impact that the client has had on their life. Questions to be asked in the video vary case by case. The questions

may want to highlight the client's otherwise harmonious and law-abiding life to demonstrate that this offense was aberrant behavior; questions may need to underscore underlying issues that led to the offense, such as mental health, childhood problems, or extraordinary family circumstances. The video is an opportunity to not only portray the exemplary character of the client, but to bring forth other mitigating factors that may have an effect on sentencing.

We have experienced great success in recent cases where we have submitted a character video to the court. In a recent case involving a violation of the Federal Election Campaign Act, we submitted a video that contributed to the client receiving a sentence of probation where his guidelines were 57-71 months of incarceration. Our client led a long, accomplished and, apart from these offenses, exemplary life — a life filled not just with hard work and outsized personal achievement but also with extraordinary dedication and service to others. Although he received hundreds of character letters detailing his exemplary good works and values, it was the video submission that was able to portray the pure gratitude and emotion felt by the people whose lives he changed. The family, friends, and acquaintances were able to give voice to the gratitude they felt toward a man who touched and changed their lives in immeasurable ways. We have seen success with video submissions in numerous other cases. Judges have remarked that they viewed the video several times and it allowed them to really understand the life of the defendant. Videos can humanize a client and capture their life through the testimony and stories of those whose lives they have touched.

If you would like more information regarding sentencing videos, please feel free to contact me. Remember, "A picture is worth a thousand words."



Herbert J. Hoelter
Co-Founder and CEO
7222 Ambassador Road
Baltimore, Maryland 21244
443.780.1311 *phone*
hhoelter@ncianet.org