



Writing an Effective Sentencing Memo

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The What,
When, Why,
Who, & How

Digging into the Mitigation Process

Determining Memo Structure

Pictures, Letters, & Other Creative Media

Avoiding Tired Themes

Discussion, Questions, & Collaboration

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The What: How would you describe an effective sentencing memorandum?

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An effective
sentencing
memorandum...

- is persuasive.
- is unique.
- is realistic.
- elicits an emotional response.
- compels action.
- creates space for the client to be heard.
- synthesizes a lot of information into **one** compelling narrative.

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WHY is it important to write effective sentencing memorandums?



Most judges have an idea of what their sentence will be prior to the hearing



Mitigation humanizes clients and sets them apart from their peers

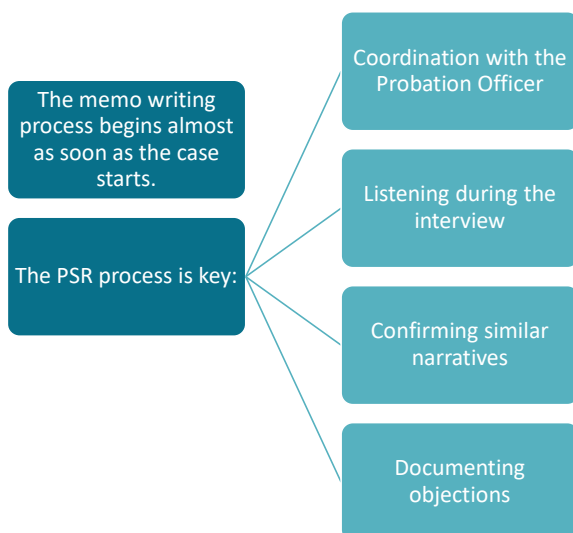


Mitigation gives our clients a voice and a forum to share their stories



Our memos can provide real validation for our clients, no matter the outcome

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WHEN to Start

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The Who: Assembling the Team

You

Your Client

Family &
Friends

Treatment
Providers &
Advocates

Hired Experts?

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Most Importantly: The How

THEMES, PLOT, TONE, PROCESS,
STRUCTURE, & EXHIBITS

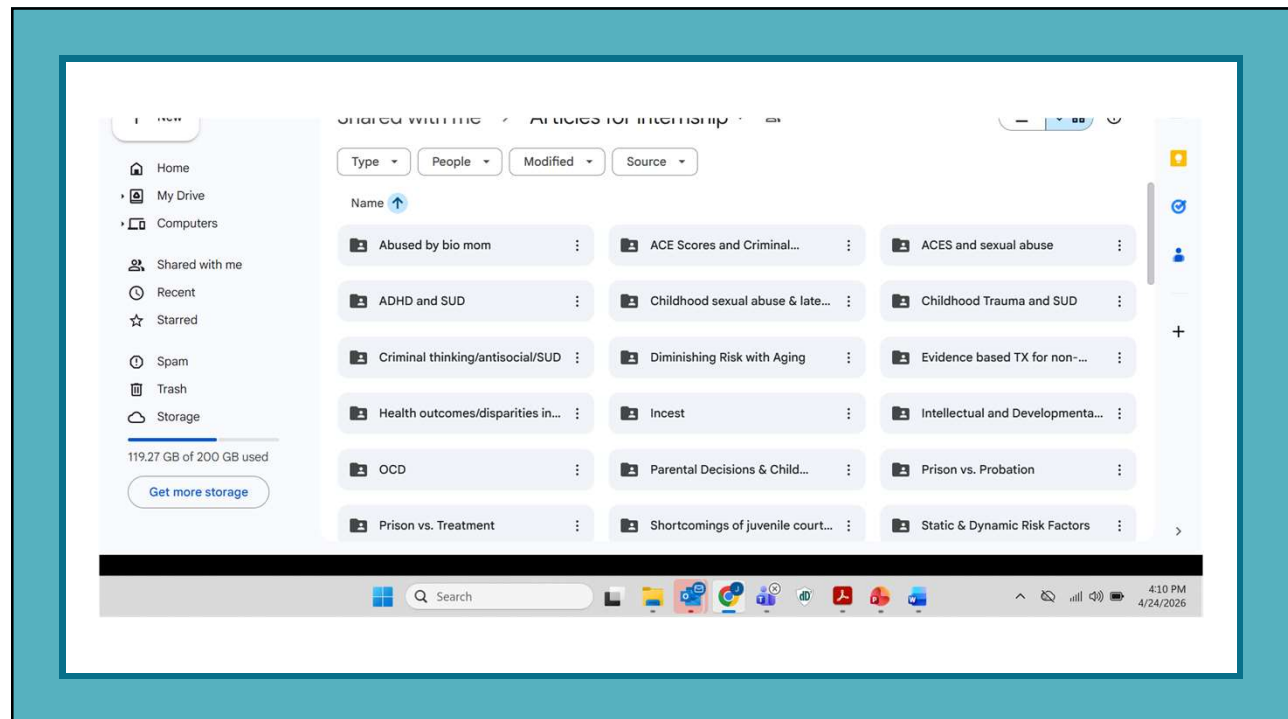
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Let the Client Guide the Way

The client interview sets the tone and informs:

- **Records Collection:** Treatment, education, ODRC & other institutions, Children's Services, employment
- **Collateral Interviews:** Family, friends, treatment providers, supervision officers, employers
- **Expert Evaluations:** Risk assessment, biopsychosocial, amenability to treatment, trauma, forensic
- **Legal Research:** Pertinent case law, ethical use of AI, and utilizing helpful databases and reports
- **Research:** Evidence-based practices, statistics, demographic data to give context or suggest a path forward

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Picking the Theme

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Types of Themes

About the case

- Minor roles, impairment, financial desperation, non-violence

About the context

- An isolated incident, unlikely to reoccur, no pattern of similar behavior, fueled by addiction and/or mental health

About the client

- Strong employment record, strong protective factors, caretaking responsibilities, overall low risk, mental health/addiction history, accountability & remorse, cooperated with authorities,

About an alternative solution

- Treatment recommendations, demonstrated compliance on supervision, efficacy of probation vs. incarceration in reducing recidivism for this offense, excessive time served

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Avoiding Theme Confusion & Theme Fatigue

Theme Confusion

- Many themes may apply, but trying to do more than one or two will be too long, too confusing, and less impactful
- **Formula 1: Theme for Offense Context + Unique Theme**
 - Addiction + Caregiving Responsibilities
 - Financial Desperation + Low Risk for Recidivism
- **Formula 2: Theme for Next Steps**
 - Treatment Plan
 - Time Served due to Caregiving Responsibilities
 - Mandatory Minimum due to Recidivism Statistics
- **Formula 3: Theme for Offense Context + Theme for Next Steps**
 - Sexual Abuse History + Amenability to Treatment

Theme Fatigue

- **Tired themes:**
 - History of abuse, neglect, & poverty
 - History of substance use
 - No criminal history for individuals with CSAM
- Ideally, you can avoid the tired themes. If not, try to share why this client's experience is unique.

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The Plot & The Tone



Plot: What's the Story?

Memo structure
Characters
Scene(s)
Fact-Checking



Tone: What emotion are you evoking?

Empathy/Sympathy
Injustice
Confidence
Optimism

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The CARS Method to Persuasive Writing:

- Have a **C**lear Position
- Know your **A**udience
- Present Convincing **R**easons
- **S**ummarize the Main Points

Credit: The Bronx Defenders

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Introduction, Conclusion, & A Clear Ask

Introductions should summarize your main argument(s)/theme(s), clearly state your ask, and set the tone for the rest of the memorandum.

Argue with us: Do you think dramatic/more artistic introductions are better?



Conclusions should restate the points of the introduction but focus more heavily on emotion & tone.



The "ask" may be specific (a certain number of months, probation) or may be more vague (below guidelines).

Hopefully you've convinced them – now tell them what to do with that feeling!

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Dramatically Drive Home Key Issues

WHAT YOU WANT TO CONVEY:

My client grew up in poverty.

HOW TO SAY IT:

Even as he got older, his situation at home remained consistent – there was never enough to eat, all the utilities were rarely on at once, and he and his siblings continued to be the victims of his mother and step-father’s consistent drug use, angry outbursts, and emotional and physical abandonment. He escalated from knocking on his neighbors’ doors asking for food to going down to the corner store to steal some snacks for his younger sisters to eat.

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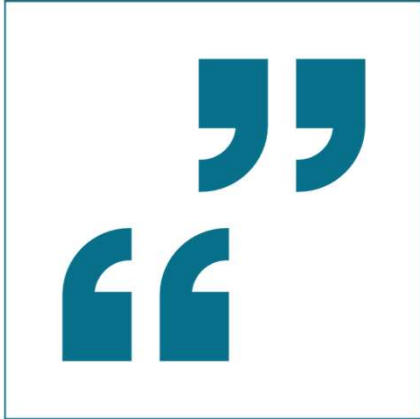
Weaving in Research

Client story and research pair well side-by-side. Often, research can provide context and even normalize seemingly maladaptive responses and behaviors.

(CLIENT STORY) *Prior to 2023, Mr. Client was only using cocaine sporadically, but he reports that he both increased his alcohol use and began to use cocaine daily after being shot. Mr. Client reports that his substance use helped with pain management and addressed the symptoms of post-traumatic stress from the event. Mr. Client worked diligently with the police to try to locate and charge the man who shot him, but he was never apprehended. In addition to flashbacks of the event and increased hypervigilance, Mr. Client also reports a great deal of anxiety and fear that this person will find him and hurt him again.*

(RESEARCH) *Mr. Client’s response is not unique. According to a study cited in the book *Narrating Injustice Survival: Self-Medication by Victims of Crime*, the majority of individuals surveyed experienced an increase in the frequency of their drug and alcohol use after being victimized, with only 9.8% using daily before experiencing crime and 48% using daily after experiencing crime (De Lint & Marmo, 2018).*

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Give Voice to the Client & their Family

The words of family members & friends can be very powerful. Use their quotes when you can:

Each letter is unique, but they all describe a man who is both deeply loved and who has consistently shown up for the people he cares about. Excerpts from two letters are below:

I was going through a tough time in my life about ten years ago. I lost my job, and my son was living out of state. My son needed to come back to Ohio, but I had no means of transportation or financial resources to help him. I called on Client and before I could explain the situation, he stopped me mid-sentence, and asserted, "Auntie, I'm on my way to get baby Jody. Don't worry about it, I'm leaving now!" And just like that, Client got on the road and drove eight hours to pick my son, his cousin, up to bring him back to Ohio.

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A family friend and co-worker wrote a character letter for Mr. Client (see Exhibit C), sharing "He is someone who consistently steps up to help others, including helping me secure the job I am currently working at, as well as assisting many others with employment opportunities." Mr. Client did what the Court often implores individuals with his criminal history to do: he utilized his entrepreneurial, enterprising, and networking skills in a legal way to support his family and community.

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Break it Up!

USE BULLET POINTS

From 2011 to 2022, Mr. Client, of his own initiative, did the following:

- Enrolled in Sinclair's Project READ program and obtained his GED
- Secured full-time employment, obtained his forklift operator's license, and advanced into skilled factory positions
- Formed and maintained a committed relationship with his partner, had three sons, and was a consistent parent and provider
- Paid off all of his traffic fines and court costs to restore and maintain driving privileges
- Maintained complete sobriety from illegal substances (he reports not using marijuana since 2011, not due to court involvement, but because he wanted to be present and engaged in his children's lives)
- Did not incur any criminal convictions or arrests

This sustained period of lawful, productive functioning, especially in the absence of the protective factors and family support that many people take for granted, reflects real, intrinsic capacity for stability.

IV. Current Stability & Protective Factors

USE PICTURES

Mr. Client's childhood was so chaotic, and the lack of caregiving so pervasive, that he only knows of one single photo of himself from childhood – a school picture a family member has held onto:



III. Strength & Resiliency: Beating the Odds

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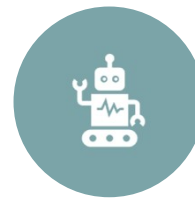
Character Letters



CONSIDER WHEN & WHERE TO
INCLUDE LETTERS



PROVIDE WRITTEN INSTRUCTIONS
SHARE THE THEME(S)



BEG THEM NOT TO USE AI
READ THE LETTERS FIRST

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Good, Bad, & Ugly Facts

Provide factual evidence for your story through exhibits (Letters of support, treatment certificates, a parent's rap sheet, newspaper articles, IEPs)

Provide context (while still acknowledging accountability) for the bad & ugly facts

Consider when to start the story

Consider ignoring some facts altogether

Keep the bad stuff in the middle

Consider when/what to file under seal

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Collaboration

What are your pro tips?

Lately, we like:

- Canva
- Google Scholar
- Using Intern Access to University Databases
- Sentencing Commission Reports
 - Length of Incarceration & Recidivism
 - Effects of Aging on Recidivism Among Federal Offenders

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Thank You