

UNITED STATES SENTENCING COMMISSION

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October 21, 1987

Mr. Kevin R. Houlihan
Assistant Director
Office of Investigations
Department of the Treasury
United States Secret Service
Washington, D. C. 20223

Dear Mr. Houlihan:

Thank you very much for your thoughtful and thorough letter. The Commission is in the process of preparing amendments to the guidelines for submission to the Congress next year. The excellent suggestions you made will be given every consideration.

I greatly appreciate your assistance, and as other ideas come to mind please transmit them to me.

With highest personal regards,

Sincerely,

A handwritten signature in dark ink that reads "Billy Wilkins".

William W. Wilkins, Jr.
Chairman

DEPARTMENT OF THE TREASURY
UNITED STATES SECRET SERVICE



WASHINGTON, D.C. 20223

OFFICE OF THE DIRECTOR

September 23, 1987

Mr. William W. Wilkins, Jr., Chairman
United States Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, DC 20004

Dear Mr. Wilkins:

On March 17, 1987, the Secret Service took advantage of the opportunity to make comments to the Commission concerning the Revised Draft of the Sentencing Guidelines published in January, 1987.

In my letter of that date, a few comments and recommendations were made concerning the Commission's treatment of violations for which this Service has an investigative interest. For instance, it was noted that fifty-six (56) of the criminal statutes pertaining to the physical security and threats against individuals under the protection of this Service, as well as laws pertaining to obligations of the United States and private financial organizations, were not considered by the Commission either directly or in the Statutory Index portion of the guidelines. A second point mentioned was that in the Fraud Section of the guidelines, the issue of using or possessing device-making equipment or the number of false identification documents or access devices involved was not discussed. A final point of the letter involved the offense levels assigned to the crimes of counterfeiting, forgery and fraud. I suggested that the offense levels for these crimes be increased to a level more commensurate with the seriousness of those offenses.

Upon reviewing the final draft of the Sentencing Guidelines submitted to Congress on April 13, 1987, I was very pleased to see that almost all of the suggestions made to the Commission were adopted. A majority of the criminal code violations previously omitted in the guidelines were included; the use or possession of access-making devices was dealt with and the offense levels for the crimes of counterfeiting, forgery and fraud were raised.

However, there are a few additional comments I would like to make concerning the Sentencing Guidelines which were submitted to Congress on April 13, 1987. They are:

1. Sixteen (16) criminal code violations remain which are not mentioned in the guidelines, either directly or in the Statutory Index. Most of these violations are for minor offenses; however, the major offenses of Computer Fraud (18 USC 1030) and the Food Stamp Statute (7 USC 2024) are not specifically discussed. A list of the criminal violations still not covered by the guidelines is attached.
2. With regard to the Food Stamp Statute mentioned above, I would like to make known a few of the problems that the Commission may wish to consider when revisions to the guidelines are made. This offense can involve both the Counterfeiting and Fraud Sections of the guidelines. The Food Stamps themselves may be counterfeited and the Authority to Participate (ATP) cards issued to recipients may be either counterfeited or forged. If they are counterfeited, counterfeiting equipment may be involved as dealt with in the Counterfeiting Section of the guidelines. The offenses may also involve a fraudulent application for Food Stamps or may involve the fraudulent acceptance of the Food Stamps by a merchant.
3. The guidelines do not indicate that a "departure" is necessary for crimes of violence against the President, President-Elect, Vice-President, Internationally Protected Individual, Former President, Candidates for the Office of President and others specifically noted by various criminal statutes. In conversations that this Service has had with members of the Sentencing Commission staff, it was mentioned that it is intended for the court to "depart" from the guidelines in these type of cases. It was also noted that if a specific increase in the offense level was mandatory, it would limit the court's ability to deal with the offender on a case by case basis. I believe that this philosophy is good, however, the guidelines do not tell the court to "depart". As the guidelines read at present, a defendant would receive a harsher sentence for assaulting a Federal law enforcement officer than for assaulting the President of the United States. The suggestion of this Service is that the instructions for this section of the guidelines be amended to state that the court should depart from the guidelines, as deemed appropriate, up to the limit provided by statute.

4. In fraud related offenses, the guidelines state that the court may wish to enhance the sentence of a defendant who possessed or used device making equipment in a manner similar to possession of counterfeiting equipment

in the Counterfeit Section. This, in essence, is allowing the court to apply the enhancement, or not, based on the court's decision. It should be noted that the court is required to impose a more severe penalty for using counterfeiting equipment under the Counterfeit Section of the guidelines. It is the opinion of this Service that the instructions for the Fraud Section be amended to state that when access device making equipment is used or possessed that the court should depart from the guidelines as in the Counterfeit Section.

5. In the Fraud Section, the guidelines place an arbitrary value for credit cards of \$100 per card. This value appears to be extremely low. The credit card industry has provided figures showing that the average loss per credit card is much more substantial. The following figures are submitted showing what the credit card industry estimates the "average" loss is per card for a particular type of activity:

Stolen Genuine Card	\$1,000
Counterfeit or Altered Card	\$1,500
Account Number Only Loss	\$1,000
Telemarketing Scheme	\$ 400
Fraudulent Application	\$1,000 - 1,500

As you can see, the figures submitted by the credit card industry shows "average" losses far in excess of the dollar amount imposed under the guidelines.

The following example illustrates our point: An individual was arrested after using one credit card for a loss of \$100. However, when arrested, he was in possession of twenty (20) other credit cards. When estimating the loss for sentencing purposes, the credit cards found in his possession would be valued at \$2,000 under the present guidelines. However, a more realistic estimate of the potential loss to the financial institution would be \$20,000. Therefore, there would be a substantial difference in the offense level, according to the Fraud and Deceit Table, when the true potential loss figures are used.

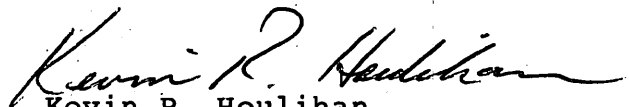
6. The guidelines allow the court to require the forfeiture of proceeds from criminal actions, such as drug related or racketeering offenses or from the proceeds of a book or movie. In many of the counterfeiting, forgery, credit card and other fraud type offenses that this Service investigates, items of substantial value are

acquired as part of the offense. It would be of great assistance to both law enforcement agencies and victims of crimes if the court were instructed to order the forfeiture of proceeds from these types of criminal activities.

I applaud the efforts of the Sentencing Commission and its staff in the monumental task of standardizing the sentencing procedures throughout the Federal Judicial System. The cooperation of your staff with this Service is greatly appreciated.

Should you wish to discuss any of the points mentioned in this letter, please feel free to contact me or Assistant Special Agent in Charge Jim Cool of this office at (535-5716).

Sincerely,

A handwritten signature in dark ink, appearing to read "Kevin R. Houlihan", with a stylized, flowing script.

Kevin R. Houlihan
Assistant Director
Office of Investigations

Attachment

ATTACHMENT

Criminal code violations for which the U.S. Secret Service has a prosecutive interest which have not yet been mentioned in the Sentencing Guidelines:

18 USC

- 35 Imparting or Conveying False Information
- 331 Mutilation, Diminution, and Falsification of Coins
- 332 Debasement of Coins; Alteration of Official Scales or Embezzlement of Metals
- 333 Mutilation of National Bank Obligations
- 336 Issuance of Circulating Obligations of Less than \$1
- 475 Imitating Obligations or Securities
- 489 Making or Possessing Likeness of Coins
- 492 Forfeiture of Counterfeit Paraphernalia
- 701 Official Badges, Identification Cards, other Insignia
- 709 False Advertising or Misuse of Names to Indicate Federal Agency
- 914 Creditors of the United States
- 1030 Computer Fraud
- 1716 Injurious Articles as Nonmailable
- 1907 Disclosure of Information by Farm Credit Examiner
- 2075 Officer Failing to Make Returns or Reports

7 USC

- 2024 Food Stamp Act of 1977