

HERBERT KOHL
WISCONSIN

WASHINGTON OFFICE:
330 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5853
T.D.D. (202) 224-4484

United States Senate

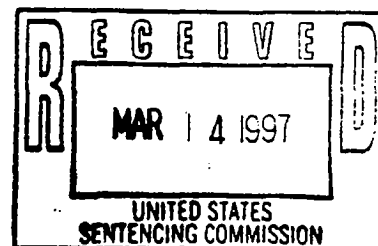
WASHINGTON, DC 20510-4903

COMMITTEES:
APPROPRIATIONS
JUDICIARY
SPECIAL COMMITTEE
ON AGING

March 14, 1997

Mr. Richard P. Conaboy, Chairman
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, D.C. 20002-8002

Attention: Public Information



Dear Mr. Conaboy:

I applaud the Commission's efforts to revise the Sentencing Guidelines for white-collar criminals. Although the Sentencing Guidelines originally increased the sentences for white-collar criminals, these proposed amendments address discrepancies between white and blue-collar criminals that have come to light since the Guidelines' enactment. For example, litigators frequently assert that the Guidelines allow for criminal antitrust defendants to receive shorter sentences than blue-collar criminals who have committed offenses of equal severity. We must eradicate this kind of sentencing disparity to foster public confidence in the Guidelines and to create a legal system in which justice is truly blind.

Although all of the proposed amendments deserve careful scrutiny before enactment, my comments speak to only a few of the proposals. Specifically, my comments address proposed Amendments Number 18 for Sections 2B1.1 and 2F1.1, the Theft and Fraud provisions respectively. These proposed amendments effectively work toward equalizing sentences for theft and fraud offenses, so I support the Commission's enactment of these changes.

COMMENT ON AMENDMENT NUMBER 18

The Commission should agree to eliminate the "more-than-minimal-planning" enhancement found in Sections 2B1.1 and 2F1.1 and other guidelines. The Commission found that judges apply the enhancement unevenly, resulting in "unwarranted disparities." To correct this problem, the Commission proposes a corresponding increase in the loss tables, and creates a two-level increase for criminals who use "sophisticated means" to impede discovery or determining the extent of the offense. This amendment reflects the common-sense notion that more planning and mental preparation on the part of criminals should result in longer sentences.

MILWAUKEE OFFICE:
310 WEST WISCONSIN AVENUE
SUITE 950
MILWAUKEE, WI 53203
(414) 297-4451

MADISON OFFICE:
14 WEST MIFFLIN STREET
SUITE 312
MADISON, WI 53703
(608) 264-5338

EAU CLAIRE OFFICE:
402 GRAHAM AVENUE
SUITE 206
EAU CLAIRE, WI 54701
(715) 832-8424

APPLETON OFFICE:
4321 WEST COLLEGE AVENUE
SUITE 235
APPLETON, WI 54914
(414) 738-1640

00215

PRINTED ON RECYCLED PAPER

The Commission should also agree to amend the base offense level of Section 2B1.1 from level four to level six. By making the base offense level for theft cases equal to that of Section 2F1.1 Fraud cases, this amendment would take an important step toward redressing the disparity between light sentences received by white-collar criminals relative to their blue-collar counterparts.

I also urge the Commission to enact Option One of the revisions to the loss tables. Although most base offense levels and specific offense characteristics increase by at least two level increments, the current loss tables increase by only a one level increment. Option One responds to this discrepancy by changing the current one-level increment in the loss tables to two-level increments. Option Two only contains a combination of one and two-level increments, and Option Three retains the old one-level increment. Thus, in order to make the Theft and Fraud loss tables more consistent with other guidelines, the Commission should choose Option One's two-level increment.

In addition, only Option One provides for severity levels at higher loss amounts, permitting loss amounts up to \$90 million. In contrast, the loss amounts for options two and three stop at \$50 million and \$40 million respectively, making no distinction between a defendant who stole \$40 million and one who stole \$100 million. It makes sense to increase the severity level for defendants who steal more because their actions result in significantly more harm. Ultimately, Option One, unlike either of the other two options, responds to the most severe theft and fraud cases with a punishment that fits the crime.

In closing, I would like to reiterate my appreciation to the Commission for undertaking the difficult task of reassessing the Sentencing Guidelines. The proposed amendments, if enacted, are a significant next step towards eradicating discrepancies in sentences among criminals and improving public confidence in the fairness of our judicial system.

Sincerely,

A handwritten signature in black ink that reads "Herb Kohl". The signature is stylized with a large, sweeping "H" and a cursive "Kohl".

Herb Kohl
U.S. Senator

HK:rjk