

Notwithstanding the multi-front offensive launched by federal and state civil and criminal law enforcement agencies, fraudulent telemarketing still plagues society, at great cost. Estimates of losses specifically caused by fraudulent telemarketers range from \$3 billion to as high as \$40 billion annually. The FTC's experience shows that these telemarketers are aware of the constant law enforcement scrutiny upon them. Nevertheless, they continue their relentless assault upon our nation's elderly population.

Telemarketing fraud goes beyond the simple taking of money: it also destroys lives. The FTC's experience shows that the vast majority of fraudulent telemarketing operations depend upon "reloading."⁷ Telemarketers purchase names of people who have been victimized by their cohorts and then repeatedly victimize those same people for larger amounts of money.⁸ We have observed that many operations have separate rooms where their best "reloaders" can work undisturbed. These reloaders are skilled at identifying all the available assets of a victim and then continuing to defraud that same vulnerable victim until the victim's life savings are gone.

Tape recordings made by victims reveal the particularly vicious nature of this crime. Telemarketers engage their victims in a war of attrition, peppering them with non-stop phone calls that are often replete with verbal abuse if the victim resists. They often convince their victims to take out loans, run up high credit card debt or sell their valuables. Many victims, who had previously been financially secure, are reduced to destitution. The victims are very often humiliated by their losses, and, further, unwilling to tell their family of their financial distress. This only leaves them even more vulnerable to the next call where the reloaders assure them that if they trust the telemarketers just one more time, they will recoup all the funds that they have lost.

Telemarketing fraud is also unique in that it is not an isolated crime; rather, it is a distinct and pervasive criminal industry. The FTC has found that people who engage in telemarketing fraud treat it as a profession. In order to perpetrate their scheme, they recruit and train others to that same criminal profession. Once these new telemarketers have been "trained," they set up their own telemarketing establishments, and begin the cycle again. When a boiler room is shut down by state or federal authorities, the telemarketers working at that room do not leave the industry, they merely find another establishment at which to practice their trade. When there have been criminal convictions, they see their colleagues sentenced to short terms of imprisonment, and are not deterred. As the Sentencing Commission points out in its notice requesting comment on this issue, and as the FTC's experience corroborates, these relatively short sentences result even after courts have enhanced the sentence under Section 3A1.1 of the

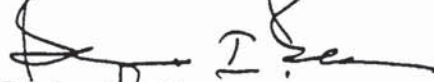
⁷ See e.g., FTC v. Thomas E. O'Day, No 94-1108-Civ-Orl-22 (M.D. Fla. 1994); FTC v. Best Marketing, No. 96-6781-Civ-Zloch (S.D. Fla. 1996); United States v. Brown, Cr. No.1-96-50 (E.D. Tenn. 1996).

⁸ Proof of this can be found in the words of telemarketers themselves. One professional telemarketer, for example, testified that the name of one victim was found in every boiler room in which she had worked.

guidelines (the vulnerable victim enhancement). Based upon its extensive experience, the FTC believes that stronger sanctions are necessary for those who engage in telemarketing fraud to make the threat of criminal prosecution more than just the "cost of doing business." The FTC believes that nothing less than the threat of lengthy incarceration will effectively deter this group of people who have made fraud their livelihood

Vigilant civil enforcement by the FTC and state Attorneys General has led to the successful lawsuits against numerous telemarketing operations, shutting down their operations and providing restitution for the victims in some cases. However, fraudulent telemarketing will remain a problem of epidemic proportions as long as the benefits to the perpetrators outweigh the costs. Currently, the costs are low enough that fraudulent telemarketing still flourishes as its own criminal industry. Higher sentences should help to raise those costs, deter law violations and punish appropriately those who use the telephone to bilk the public. Accordingly, the FTC urges the Sentencing Commission to amend the sentencing guidelines to require enhanced penalties for those convicted of telemarketing fraud.

By Direction of the Commission



Benjamin M. Berman
Acting Secretary

DATED: March 11, 1998



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

EDWARD W. KELLEY, JR.
MEMBER OF THE BOARD

March 9, 1998

The Honorable Richard P. Conaboy, Chairman
United States Sentencing Commission
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20002-8002

Dear Commissioner:

In Treasury Secretary Rubin's letter to you dated March 5, 1998, the Department of the Treasury urges that the Sentencing Commission assess the adequacy of existing sentencing guidelines in light of recent developments in the crime of counterfeiting currency by means of computer and ink jet printers.

The Board of Governors shares fully the Treasury's concern about the threat to the integrity of United States currency posed by these developments.

Sincerely,

A handwritten signature in cursive script that reads "Edward W. Kelley, Jr." followed by a vertical line.

February 9, 1998

Deidra Douglas
2743 N. Judson St.
Phila., PA. 19132

Richard C. Conaboy,
Chairman
U.S. Sentencing Commission
1 Columbus Circle N.E.
#2-500 South Lobby
Washington, D.C. 20002-8002

Re: Proposed Amendment to the Sentencing Guidelines
Submission date deadline: March 12, 1998
Possible submission date deadline to Congress: May 1, 1998

Dear Mr. Conaboy:

As a tax-paying American, I am appalled that our government would allow its law enforcement agents to engage in a sexual relationship with a targeted suspect as a law enforcement tool.

There is such a concept as fairplay in investigating suspects. However, to manipulate a vulnerable suspect as a means to achieve an arrest and conviction shocks the conscience of ordinary citizens.

I propose that the Commission adopt an amendment to the sentencing guidelines that would mandate a significant downward departure in cases where law enforcement agents engage in sexual relationships with targeted suspects during the course of an on-going criminal investigation.

Please inform me if you, or other members of the Commission, support such an amendment.

I await your kind reply.

Thank you.

Very truly yours,

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UNITED STATES DISTRICT COURT

Western District of Wisconsin
120 North Henry Street
Post Office Box 591
Madison, Wisconsin 53701
February 5, 1998

Chambers of
John C. Shabaz
Chief Judge

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

Dear Judge Conaboy:

In the January 1998 issue of Guide Lines it is noted that the Commission seeks public comment concerning proposals to revise the loss tables in the fraud and theft guidelines to substantially increase penalties for high-dollar loses.

This revision should be a number one priority. Enclosed you will please find an excerpt from a case involving the embezzlement of \$507,000 with a top guideline for imprisonment of 24 months. This certainly sends an adverse message to not only the general public but to those who are to be deterred.

Hopefully the guidelines will be substantially increased to avoid this inequity in the future. Numerous additional examples are available upon request.

Yours very truly,


John C. Shabaz
Chief Judge

JCS/sb

STATEMENT OF REASONS

The Court accepts the plea agreement on the grounds that it adequately reflects defendant's criminal conduct and does not undermine the sentencing guidelines or statutory purpose of sentencing. The court accepts the guideline calculations proposed by the Probation Office which are based in the Guidelines Manual effective November 1, 1994. These calculations take into account all the defendant's relevant conduct, pursuant to §1B1.3(a)(1) and (2). The defendant's offense level is 15 and her Criminal History Category is I, resulting in a guideline imprisonment range of 18 to 24 months. A sentence at the top of the guideline range, combined with a long period of supervised release, is sufficient to provide general and specific deterrence and accountability for defendant who embezzled 1/2 million dollars. Specifically the defendant embezzled \$498,972.94 and attempted to embezzle another \$7,995.16 for a total intended loss to Companies in the amount of \$506,968.10. She embezzled 521 claims checks for the period August, 1993 to March, 1995. There is no justification for the defendant's criminal activity nor does she attempt to justify her conduct with anything reasonable.

Guideline Range Determined by the Court:

Total Offense Level: 15

Criminal History Category: I

Imprisonment Range: 18 to 24 months

Supervised Release Range: 2 to 3 years

Fine Range: \$4,000 to \$40,000

Restitution: \$498,972.94

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