

LAW OFFICES OF
MICHAEL J. O'KANE
MERCEDE CITY CENTER • SUITE 333
200 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA 33301

(305) 467-8735

MIAMI (305) 947-0668

FAX (305) 524-0031

ADMITTED IN
FLORIDA, ILLINOIS & LOUISIANA

August 24, 1989

Mr. Paul K. Martin
Communications Director
United States Sentencing Commission
1331 Pennsylvania Ave. N.W.
Ste. 1400
Washington, D.C. 20004

Attention: Public Access Comment

Dear Mr. Martin:

The following is my comment on the Commission's Notice of Proposed policy regarding public access to Sentencing Commission documents and data.

These comments are based on my experience as a federal criminal law defense attorney, mainly in the Southern District of Florida.

Basically, it is my opinion that the appellate courts, in interpreting the Commission's guidelines, treat those guidelines almost as if they were statutes. Unfortunately, there is no legislative history for the particular guidelines themselves. While it is possible in a very gross way to sometimes trace a guideline through three or four revisions, there is, more often than not, no way to know why the Commission took a specific course or altered or amended a guideline. Without knowing the guidelines' history, it becomes very difficult to suggest specific applications.

With the passage of the Freedom of Information Act the Congress decided that the era of government 'secret law' had come to an end. The application of the criminal justice system to the citizenry is perhaps the most intrusive way that government impacts upon our lives.

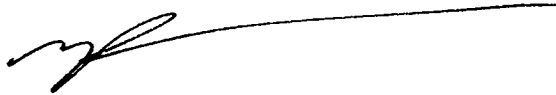
Openness in Government is a hallmark of democracy. A Government that operates in the shadows using secret law is a Government that is unaccountable to its citizens. Through administrative oversight, it appears that the laws granting access to information do not apply to agencies placed in the judicial branch. The Commission may, however,

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administratively adopt measures which would provide citizens with the same type of access to information freely available from all of the agencies in the Executive branch.

Therefore, it is respectfully recommended that the Commission administratively adopt procedures analagous to the Freedom of Information Act and the Privacy Act in the furtherance of our democratic principles.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'M. J. O'Kane', followed by a long horizontal line extending to the right.

Michael J. O'Kane