

United States District Court

Southern District of Ohio
801 U.S. Post Office & Courthouse
Cincinnati, Ohio 45202

Chambers of
Carl B. Rubin
District Judge

October 12, 1990

The Honorable William W. Wilkins, Jr.
Chairman, United States Sentencing Commission
1331 Pennsylvania Avenue, N.W.
Suite 1400
Washington, D.C. 20004

Dear Judge Wilkins:

Thank you for your letter of September 27th and an opportunity to comment upon the Sentencing Guidelines. It is my opinion that they are working extremely well. There have been very few instances where the guideline sentence differs significantly from a sentence that I would have imposed in the absence of the Guidelines.

I do want to comment on a matter of some significance. There is a growing acceptance by the various circuit courts of the use of "relevant conduct" to be used as an enhancement of sentence. The cases seem to hold that relevant conduct need be proved only by preponderance of evidence. I am troubled by this notion that a person can be restrained of his liberty by a preponderance of the evidence. If a sentence is enhanced in this fashion, the prison walls will be no lower, nor will confinement be any less rigorous for the time that is spent where proof was required of a preponderance than the time that will be spent where proof beyond a reasonable doubt was required.

Very sincerely yours,



Carl B. Rubin
United States District Judge