

KIBBEY & BARLOW

ATTORNEYS AT LAW

February 25, 1997

U.S. Sentencing Commission
One Columbus Circle
Suite 2-500
Washington, DC 20002-8002

Dear Commission Members:

As a former prosecutor and now an attorney who regularly represents criminal defendants, I write to give you my input on guideline modifications for acquitted defendants.

It is without question that the current legal ability for a judge to consider and then add points for acquitted offenses is abhorrent to the entire notion that a man should be punished only for what he is convicted of. Such a practice runs afoul of the common perception of justice to the average American layman. It is this average American layman that we are all counting upon to trust the government and to support the important institutions of the judiciary. Public erosion and confidence of our judiciary can only lead to further erosion of the basic foundations that we all rely upon.

Simply put, a federal sentencing judge should not be allowed to consider acquitted offenses for enhancement of sentencing ranges. However, if the Commission is going to give a judge the discretion to consider such acquittals, I believe the standard should be a very tough one: a combination of requiring that the defendant's guilt be proven by "clear and convincing evidence," as well in so doing that such considerations "would not raise substantial concerns of fundamental unfairness to the average American." It is important that these matters be viewed from the eyes and minds of the average citizen, because otherwise legal sophistry would enable prosecutors and judges to convince themselves that such consideration did not seem fundamentally unfair to them.

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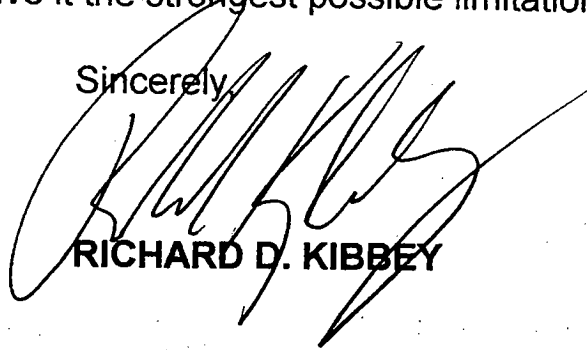
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Thank you for considering this, and I urge you not to allow it, but if you are going to allow it, to give it the strongest possible limitations.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Kibbey', written over the typed name.

RICHARD D. KIBBEY

RDk:ksw