

April 3, 2003

Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I write on behalf of the Federal Judges Association ("FJA"), a voluntary association consisting of approximately 850 federal district and appellate judges. The FJA strongly urges the Conferees on H.R. 1104 and S.151 to strike the Feeney Amendment to H.R. 1104 which was incorporated into the House-passed version of S.151.

The Feeney Amendment substantially alters, and in many instances eliminates, federal judges' consideration of crucial factors in determining whether sentencing leniency should be exercised -- factors which, by the way, currently cannot even be considered by judges until they perform a very structured and detailed analysis of issues that would permit them to depart from Sentencing Guidelines. This amendment undermines the essential attribute of judging, which is to apply the law to the specific case by making an informed and dispassionate judgment.

Among other things, the Feeney Amendment eliminates the "heartland" approach to sentencing and eliminates the consideration of the truly extraordinary and rare circumstance which would render a sentence with the guideline range unjust. For example, an offender's military record or youth may no longer be considered under the current Feeney Amendment.

Moreover, the Feeney Amendment substantially alters the role of trial and

appellate judges in sentencing and imposes far more substantial sentencing responsibilities on appellate judges who have had no contact with the offender's trial. The FJA believes that this grave departure from the procedures of judicial review is unwarranted.

Furthermore, the Feeney Amendment eviscerates fifteen years of judicial practice following the Sentencing Reform Act as well as the cooperative efforts of Congress, the Executive Branch and the Judiciary to bring about a more just sentencing system. Remarkably, all of this would be legislatively accomplished with no input in the process from federal judges or U.S. Attorneys or the U.S. Sentencing Commission itself.

The FJA therefore respectfully requests that the Feeney Amendment be stricken from the bill in Conference and that federal judges be given an opportunity to participate in any further analysis of the actual experience of our federal courts in guideline sentencing.

Sincerely,

For the Federal Judges Association

Jerome B. Simandle
U.S. District Court Judge, DNJ
Chair FJA Sentencing Guidelines Committee

E. Grady Jolly
Fifth Circuit Court of Appeals Judge
President, Federal Judges Association