(From the Congressional Record of July 09, 2003, Senate section - Pages: S9115-6)

JUDGES ACT

Mr. LEAHY. Mr. President, earlier this year, the House Republicans saddled the bipartisan, non-controversial AMBER Alert bill with numerous unrelated and ill-conceived provisions, collectively known as the "Feeney amendment," that effectively overturned the basic structure of the carefully crafted sentencing guideline system. At the time, we were warned by distinguished jurists that these provisions would irrevocably harm our sentencing system and compromise justice. For example, the Nation's Chief Justice warned that the Feeney amendment, if enacted, "would do serious harm to the basic structure of the sentencing guideline system and would seriously impair the ability of courts to impose just and responsible sentences." Despite such objections, and without any serious process in the House or Senate, these provisions were pushed through conference with minor changes and enacted.

We are now beginning to witness the far-reaching impact of this folly. Not only have we compromised the sentencing system, but we have alienated and minimized the effectiveness of our Federal judges, prompting at least one to announce early retirement.

As enacted, the Feeney amendment, substantially reversed provisions allowing Federal judges to depart from sentencing guidelines when justice requires. It also created a "black list" of judges who impose sentences that the Justice Department does not like, and limited the number of Federal judges who can serve on the Sentencing Commission, thus reducing the influence of practical judicial experience on sentencing decisions.

In response, in a June 24 op-ed in the New York Times, Republican-appointed district judge and former Federal prosecutor, John S. Martin, Jr., decried these provisions as "an assault on judicial independence," "at odds with the sentencing philosophy that has been a hallmark of the American system of justice," and tragically, the impetus for his decision to retire from the bench, rather than exercise his option to continue in a lifetime position with a reduced workload. “When I took my oath of office 13 years ago I never thought I would leave the Federal bench...I no longer want to be part of our unjust criminal justice system."

It is shameful that we have allowed such half-baked, poorly-crafted legislation to lead to the loss of a judge that has dedicated his career to fighting crime and preserving justice. When he was appointed by the first President Bush in 1990, Judge Martin brought with him to the bench years of knowledge and experience as a Federal prosecutor, including 3 years as a U.S. Attorney for the Southern District of New York. As a former Federal prosecutor, he is no slouch on crime. He knows very well the importance of vigorously pursuing and punishing wrong-doers. But his experience has also taught him that these goals cannot trounce the equally-critical pursuit of justice and fairness.

Unless we reverse the damaging provisions in the Feeney amendment, we will continue to compromise justice, alienate Federal judges, and threaten the stability and integrity of our judicial system. That is why I joined Senators Kennedy, Feingold, and Lautenberg in introducing the Judicial Use of Discretion to Guarantee Equity in Sentencing Act of 2003, or the JUDGES Act. This bill would correct the Feeney amendment's far-reaching provisions by restoring judicial discretion and allowing judges to impose just and responsible sentences. In addition, the JUDGES Act would reverse the provisions limiting the number of Federal judges who can serve on the Sentencing Commission. Finally, the JUDGES Act would follow through on the advice of Chief Justice Rehnquist to engage in a "thorough and dispassionate inquiry" on the Federal sentencing structure by directing the Sentencing Commission to conduct a comprehensive study on sentencing departures and report to Congress with 180 days.

In his New York Times op-ed, Judge Martin raised another important point: Limiting judicial discretion and involvement in sentencing practices also reduces the personal satisfaction that judges derive from knowing that they are integrally involved in promoting a more just society, and in doing so removes a powerful incentive that prompts potential judges to accept a judicial appointment, despite inadequate pay.

"When I became a Federal judge, I accepted the fact that I would be paid much less than I could earn in private practice...I believed I would be compensated by the satisfaction of serving the public good--the administration of justice. In recent years, however, this sense has been replaced by the distress I feel at being part of a sentencing system that is unnecessarily cruel and rigid."

We all know that judicial pay is a challenging issue. Indeed, this is why I introduced a bill, S. 787, to restore the many cost of living adjustments that Congress has failed to provide the judiciary, and have joined Chairman Hatch and many other members of the Judiciary Committee in sponsoring S. 1023 to increase the annual salaries of Federal judges and justices. I encourage my colleagues to support these efforts. But I ask them not to make the challenge of judicial pay worse by taking away the intangible compensation that is the satisfaction from serving the public good. Unfortunately, the Feeney amendment has done just that.

I again urge my colleagues to support the JUDGES Act, and I ask unanimous consent that Judge Martin's June 24 op-ed be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, June 24, 2003]

Let Judges Do Their Jobs
(By John S. Martin Jr.)

> I have served as a federal judge for 13 years. Having reached retirement age, I now have the option of continuing to be a judge for the rest of my life, with a reduced workload, or returning to private practice. Although I find my work to be interesting and challenging, I have decided to join the growing number of federal judges who retire to join the private sector.
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> When I became a federal judge, I accepted the fact that I would be paid much less than I could earn in private practice; judges make less than second-year associates at many law firms, and substantially less than a senior Major League umpire. I believed I would be compensated by the satisfaction of serving the public good--the administration of justice. In recent years, however, this sense has been replaced by the distress I feel at being part of a sentencing system that is unnecessarily cruel and rigid.

For most of our history, our system of justice operated on the premise that justice in sentencing is best achieved by having a sentence imposed by a judge who, fully informed about the offense and the offender, has discretion to impose a sentence within the statutory limits. Although most judges and legal scholars recognize the need for discretion in sentencing, Congress has continually tried to limit it, initially through the adoption of mandatory-minimum sentencing laws.

Congress's distrust of judicial discretion led to the adoption in 1984 of the Sentencing Reform Act, which created the United States Sentencing Commission. The commission was created on the premise, not unreasonable, that uniformity in sentencing nationwide could be promoted if judges and other criminal law experts provided guidelines for federal judges to follow in imposing sentences. However, Congress has tried to micromanage the work of the commission and has undermined its efforts to provide judges with some discretion in sentencing or to ameliorate excessively harsh terms.

For example, when an extensive study demonstrated that there was no justification for treating crack cocaine as 100 times more dangerous than powdered cocaine, the ratio adopted by Congress in fixing mandatory minimum sentences, the commission proposed reducing the guideline ratios. However, the proposal was withdrawn when Congressional leaders made it clear that Congress would overrule it.

Congress's most recent assault on judicial independence is found in amendments that were tacked onto the Amber Alert bill, which President Bush signed into law on April 30. These amendments are an effort to intimidate judges to follow sentencing guidelines.

From the outset, the sentencing commission recognized the need to avoid too rigid an application of the guideline system and provided that judges would have the power to adjust sentences when circumstances in an individual case warranted. The recent amendments require the commission to amend the guidelines to reduce such adjustments and require that every one be reported to Congress. They also require that departures by district judges be reviewed by the appellate courts with little deference to the sentencing judge.

Congress's disdain for the judiciary is further manifested in a provision that changes the requirement that "at least three" of the seven members of the sentencing commission be federal judges to a restriction that "no more than" three judges may serve on it. Apparently Congress believes America's sentencing system will be jeopardized if more than three members of the commission have actual experience in imposing sentences.

Every sentence imposed affects a human life and, in most cases, the lives of several innocent family members who suffer as a result of a defendant's incarceration. For a judge to be deprived of the ability to consider all of the factors that go into formulating a just sentence is completely at odds with the sentencing philosophy that has been a hallmark of the American system of justice.

When I took my oath of office 13 years ago I never thought that I would leave the federal bench. While I might have stayed on despite the inadequate pay, I no longer want to be part of our unjust criminal justice system.

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