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Contact: House Judiciary Press Jeff Lungren/Terry Shawn

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Phone: (202) 225 2492

**Sensenbrenner Remarks before the U.S. Judicial Conference Regarding
Congressional Oversight Responsibility of the Judiciary**

WASHINGTON, D.C. - House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-Wis.) spoke this morning before the Judicial Conference, a body composed of federal judges of districts and levels from across the country and headed by Supreme Court Chief Justice William Rehnquist. Chairman Sensenbrenner delivered the following remarks:

"Thank you for the invitation to speak this morning before the Judicial Conference of the United States.

"As we all know, the Founders of our Republic drafted a blueprint for self-government that has endured for well over two centuries because it delineated a balanced relationship among the legislative, executive, and judicial branches. The tripartite system engrafted into our Constitution has served as a model charter of government for nations around the world; and the intellectual legacy of our Founders is the proud birthright of every American.

"The Founders anticipated, indeed welcomed, a dynamic interplay among the branches of government. For example, in a speech to the House of Representatives in 1789 concerning the proper role of the judicial branch, James Madison stated:

'I acknowledge, in the ordinary course of government, that the exposition of the laws and Constitution devolves upon the judicial; but I beg to know upon what principle it can be contended that any one department draws from the Constitution greater powers than another, in marking out the limits of the powers of the several departments.'

The relationships among the federal branches over the course of our nation's history has been typified by comity and mutual respect. While sometimes rivalrous, relations among the branches have been free of the destructive impulses that have proven ruinous to other nations.

"The relative tranquility in these inter-branch relations is at least partly attributable to the clarity with which the Constitution assigns authority to each branch. The Constitution provides Congress a central role in regulating the Judiciary. Article I provides Congress the authority to establish the lower federal courts, determine the Supreme Court's appellate jurisdiction, impeach and remove judges, and to enact laws necessary and proper for executing these authorities.

"Unfortunately, over the past year or so, Congress, and the House Judiciary Committee in particular, has been under sustained criticism for its constitutionally-mandated legislative and oversight actions concerning the federal judiciary. The stridency of these remarks has sometimes taken on a harshness that is not only uncommon, but inconsistent with the historic amity that has governed relations between the branches.

"As we all know, Congress passed the PROTECT Act last year, which among other things reformed the federal criminal laws concerning child abduction and child pornography. Among the provisions of the bill were reforms of the federal sentencing

guidelines; particularly, reforms correcting abuse by federal judges of downward departure authority. The Feeney Amendment was approved by the House of Representatives on a straight up-or-down vote by an overwhelming bipartisan majority - 357 to 58. The final bill, which included weakened Feeney provisions, passed the House 400 to 25 and the Senate 98 to 0.

"The Feeney Amendment represents a legislative response to long-standing Congressional concern that the Sentencing Guidelines were increasingly being circumvented by some federal judges through inappropriate downward departures, resulting in a return to sentencing disparities.

"Much attention has been focused on the Judiciary Committee's oversight of the Chief Judge of the District of Minnesota following misleading testimony before the Committee concerning the application of the federal sentencing guidelines. He identified specific cases as relevant to the Committee's consideration of pending legislation. Thereafter, the Committee sought the public records of these cases and certain others in which the Chief Judge had departed downward. Among other documents, the Committee obtained a transcript of one of the Chief Judge's sentencing hearings in which he admitted to having granted "an illegal departure" in the case and dared the United States to appeal his one month variance. Surely reasonable persons would conclude that Congress has a responsibility to inquire further in the face of such an admission.

"In a letter to me dated November 7, 2003 this body (the Judicial Conference of the United States) objected to 'the dissemination of judge-specific data on sentencing in criminal cases,' and suggested that 'Congress should meet its responsibility to oversee the functioning of the criminal justice system through use of this data without subjecting individual judges to the risk of unfair criticism in isolated cases.' I have been perplexed as to why such furor has been raised over obtaining records from a judge's publicly decided cases.

"Assuredly, federal judges in a democracy may be scrutinized, and may even be 'unfairly criticized.' Subject to removal from office upon conviction of impeachment, Article III judges have been given lifetime tenure precisely to be better able to withstand such criticism, not to be immune from it.

"That the Congress, the elected representatives of the people, may obtain and review the public records of the Judicial branch is both Constitutionally authorized and otherwise appropriate. Over 200 years of precedents show that the Judiciary as a collective body, or an individual judge, is subject to Congressional inquiry. For example, every year Congress scrutinizes budget requests and appropriates money. On a more targeted basis, articles of impeachment against federal judges stemming from their conduct on the bench have led to both impeachment by the House and trial and conviction in the Senate and removal from office on several occasions.

"Of course, I think we all can agree that impeachment ought not lie simply because Congress may disagree with a judge's 'judicial philosophy,' or because Congress considers a judge's ruling 'unwise or out of keeping with the times.' That is a far cry from the suggestion that Congress lacks authority, or should not exercise it, to conduct appropriate oversight of the judicial branch including individual judges.

"The Committee's oversight of the sentencing record of the Chief Judge of the District of Minnesota is not premised upon disagreement concerning the 'wisdom' of a particular sentence, but upon its legality.

"I think it is important to note that Congressional oversight has assumed increased importance because of the delegated authority currently possessed by the Judiciary to investigate and impose appropriate discipline upon its members and its decidedly mixed record in this regard. I have previously noted my profound disappointment with the whitewash of the Congressional complaint against the Honorable Richard D. Cudahy of the 7th Circuit Court of Appeals while serving on the Special Division of the D.C. Circuit Court overseeing independent counsels. Judge Cudahy, whether

inadvertent or otherwise, leaked confidential sealed grand jury material to an AP reporter on the day that former Vice President Gore was nominated to run for President. Judge Cudahy admitted to his acts only upon threat of exposure by a criminal investigation and polygraph examination, after seeking to preclude any investigation.

"In response to my formal complaint as Chairman of the Committee on the Judiciary, Judge Richard Posner, only eight days after its receipt, simply whitewashed the matter regarding his colleague Judge Cudahy without conducting any investigation. Judge Posner dismissed the matter out of hand by noting that Judge Cudahy had apologized and Judge Posner concluded that the leak simply did not constitute Rule 6(e) 'matters occurring before the grand jury.' This conclusion is contrary to the view of the Chief Judge of the Special Division of the D.C. Circuit Court, Judge David B. Sentelle.

"The Judiciary's response in the Cudahy matter stands in contrast to the Congressional Judicial complaint concerning Judge Norma Holloway Johnson. In this case, an independent investigator was hired to review and evaluate allegations, outlined in a congressional complaint, that the Chief Judge of the D.C. judicial district bypassed the random case-assignment process in four campaign finance cases that were potentially politically embarrassing. The rules of the court with respect to case-assignments changed as a result.

"The experience with the Cudahy matter and the Chief Judge of the District of Minnesota raises profound questions with respect to whether the Judiciary should continue to enjoy delegated authority to investigate and discipline itself. If the Judiciary will not act, Congress will - consistent with its Constitutional responsibilities. Congress will begin assessing whether the disciplinary authority delegated to the judiciary has been responsibly exercised and ought to continue.

"Before I conclude, I wish to touch briefly on a point that has generated significant scholarly debate and renewed urgency in light of recent Supreme Court decisions: the Court's increased reliance on foreign laws or judicial proceedings in the interpretation of American constitutional and statutory law. Article VI of the Constitution unambiguously states that the Constitution and federal statutes are the supreme law of the land. America's sovereignty may be imperiled by a jurisprudence predicated upon laws and judicial decisions unfound in our Constitution and unincorporated by the Congress. Inappropriate judicial adherence to foreign laws or legal tribunals threatens American sovereignty, unsettles the separation of powers carefully crafted by our Founders, and threatens to undermine the legitimacy of the American judicial process. I anticipate Congressional examination of this issue in the coming months.

"Thanks again for the opportunity to speak before the conference today."