
April 30, 2003

A Judicial Witch Hunt

James Rosenbaum is the chief judge of the United States District Court in Minnesota. Appointed by President Ronald Reagan and confirmed by a Republican-controlled Senate in 1985, Judge Rosenbaum is hardly an obvious target for conservatives seeking to reshape the federal bench. Yet he is now facing a Kafkaesque witch hunt, with Congress making dangerously improper demands for his files and notes because he has objected to federal sentencing policies that restrict a judge's discretion. The attack on Judge Rosenbaum is not only a sign of the right's continuing attempt to hijack the federal judiciary but also trespasses on the constitutional separation of powers. It must stop.

The saga began a year ago when Judge Rosenbaum appeared before a House Judiciary subcommittee to support changes in federal sentencing policies. The changes, unanimously adopted by the United States Sentencing Commission, authorized shorter prison terms for first-time drug defendants deemed "minor" participants. Judge Rosenbaum would have been better off staying home.

Using examples from his own experience, Judge Rosenbaum said he opposed a Republican bill that would have blocked revision of the guidelines. His remarks, while not devoid of hyperbole, echoed criticism voiced by Supreme Court justices, prosecutors and defense attorneys. He did not mislead anyone, or disguise that he had used his discretion in a few drug cases to impose lighter sentences.

Thus began an all-out attack against Judge Rosenbaum in which he is accused of "misstating" facts and meting out "illegal" sentences. The subcommittee has begun a barrage of inquiries into his sentencing decisions in drug cases and the role of his law clerks, even though the proper oversight role of Congress does not extend to investigating sitting judges because of their decisions or policy views.

Congress ignored Chief Justice William Rehnquist when he urged it to resist tagging hastily devised revisions of the federal sentencing guidelines onto the recently approved Amber Alert bill. But that should not deter Justice Rehnquist, a devoted champion of judicial independence, from speaking out against an irrational attack against a respected jurist, and the judiciary as a whole.