

Dear Judge _____

In May of last year, Chief Judge James M. Rosenbaum of the District of Minnesota appeared before a subcommittee of the House Committee on the Judiciary to testify regarding certain then-pending amendments to the federal sentencing guidelines. Chief Judge Rosenbaum's testimony was in support of the position taken by the United State Sentencing Commission.

Although Chief Judge Rosenbaum's testimony caused Congressman Tom Delay to lump him in with the (in Mr. Delay's words) "liberal legal establishment," Judge Rosenbaum is a former United States Attorney who was nominated to the bench by President Reagan and confirmed in 1985 by a Republican-led Congress. His record as a jurist is one of scholarship and conservatism.

In his testimony before Congress, Chief Judge Rosenbaum candidly pointed out deficiencies in the federal sentencing guidelines. His chief concern was the very limited discretion left to district judges to distinguish between first-time offenders in need of rehabilitation and "kingpins" properly subjected to the severest punishment. He also expressed concern about the prospect of innocent persons being falsely convicted in federal drug cases. This concern is, of course, one shared by every conscientious and experienced judge and lawyer (prosecution or defense) in every criminal court in America.

But Chief Judge Rosenbaum's candor and insight was not what the congressional subcommittee wanted to hear. The subcommittee issued a 22-page report that did not scruple to accuse Judge Rosenbaum of perjuring himself before, and willfully misleading, the committee. At present, the committee is considering a measure unprecedented in our jurisprudential history: issuing a subpoena to a Chief Judge Rosenbaum demanding that he produce to Congress his files, private notes, and the like, in connection with every downward departure sentence he has ordered since January 1, 1999.

A moment's reflection will suggest just how inimical such a subpoena would be to the principle of separation of powers. If Congress can subpoena a district judge's notes, his memos to and from his law clerks, his private files, why can it not do the same to circuit judges? Why not to the justices of the Supreme Court? If Congress can invigilate every sentencing decision made by every trial judge, and reviewed by every appellate judge, it is meaningless to talk of a detached and independent American judiciary.

The National Association of Criminal Defense Lawyers (NACDL), of which I am a proud member, has a long history of support for an independent and neutral judicial branch of government. I take the liberty of enclosing with this letter a copy of a resolution just passed by NACDL. The resolution condemns the congressional bullying of Judge Rosenbaum, and forthrightly asserts the doctrines of separation of powers and the independence of the judiciary.

You may wish to bring the resolution, and the facts that it narrates, to the attention of your colleagues. In any event, I thought that you would appreciate a copy of it.

Very truly yours,