

James M. Rosenbaum
District of Minnesota

*You are essentially the same age that I was when I came out of law school. . . I'm now approximately the age that you will be when you are released. And I suspect standing where you are you are looking at an old man.*¹

*Please consider giving the judiciary the chance to do the job for which it was chosen and designated by the Constitution to perform. We work with this system, and those who operate in it every day of our lives. Please give us the tools to make it more fair and just.*²

Appointed by: President Ronald Reagan, 1985.

Law School: University of Minnesota, J.D. 1969.

Prior Legal Experience: VISTA Attorney, 1969-70; Staff Attorney, Leadership Council for Metropolitan Communities, 1970-72; Katz, Tuabe, Lange & Frommelt, 1973-77; Private Practice 1977-79; Gainsley, Squier & Korsh, 1979-81; United States Attorney, D. Minn., 1981-85.

Background and Reputation in the Legal Community

Judge Rosenbaum began his career as a VISTA attorney and then as a staff attorney for the Leadership Council for Metropolitan Open Communities. He next practiced law with firms in Minnesota while also serving as a municipal prosecutor for St. Louis Park, Minnesota. In 1981, President Reagan appointed him to be the United States Attorney for Minnesota. Having been an active trial lawyer, as United States Attorney, he prosecuted his own caseload as well as supervised the office. In 1985, President Reagan elevated him to the federal bench.

Lawyers interviewed uniformly say that Judge Rosenbaum has a high level of ability and that he is very smart, articulate, and eloquent. He is considered tough on lawyers who are not prepared or who “try any tricks.” One lawyer notes that, “You have to be tough and realize his comments aren’t personal.” Another remarked, “He’s like a very hard law school professor in the courtroom. If you are prepared, it’s a real thrill to practice before him.” Another said, “He can be very humorous and very engaging.” Several lawyers also commented on his use of technology in the courtroom.

Civil attorneys say that Judge Rosenbaum is “fairly conservative, but not predictable.” He pushes lawyers to settle cases unless he thinks the case is worthy of trial. Most lawyers on the civil side consider him a fair judge. Criminal defense lawyers say Rosenbaum is fair but tough in dealing with criminal defendants. However, they credit his willingness not to be intimidated by the government. On sentencing, there is a variety of opinion among lawyers.

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Sentencing Transcript at 18, *United States v. Wesley Hawkins*, No. 4-93-1386, (Dist. Minn. Sept. 23, 1994).

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Testimony of James M. Rosenbaum, Chief Judge, United States District Court, District of Minnesota, before the United States House Committee on the Judiciary, May 14, 2002, at 11 (copy on file with author).

Some say his sentences can be harsh whereas others state that he will give defendants a break “when he can.”

Judge Rosenbaum on Sentencing Policy

In May 2002, Judge Rosenbaum voluntarily appeared before the House Subcommittee on Crime, Terrorism and Homeland Security to testify against a bill that sought to rollback a Sentencing Guideline amendment. The amendment had lowered sentences for drug defendants who had played a “minimal role” in the distribution network by capping their base Offense Level, regardless of the actual quantity of narcotics involved in the crime. The amendment had been approved by the Sentencing Commission and had been endorsed by the Criminal Law Committee of the Judicial Conference.

Judge Rosenbaum began his testimony by explaining that as a former United States Attorney and Reagan appointee, he was “no bleeding heart liberal.”³ However, he supported the amendment because, in his opinion, capping the offense level for minimal participants properly shifted the focus of sentencing back to the culpability of the offender and away from the scope of the conspiracy. He argued this was especially important for low level drug defendants because these offenders rarely made much money and their participation was often only episodic. In addition, they almost never had any real control or influence over the operation.⁴ Judge Rosenbaum elaborated on who he believed these “minnows” of the drug world were:

They are the women whose boyfriends tell them, “A package will be coming by mail or from a package delivery service in the next two weeks. Keep it for me, and I’ll give you \$200 bucks, or maybe I’ll buy you food for the kids.” Or they are drug couriers who either swallow, wear, or drive drugs from one place to another. And they frequently have no idea what they are carrying or receiving, and if they have an idea of what, they usually don’t know how much.⁵

Judge Rosenbaum then gave over a dozen examples of defendants from cases in Minnesota whom he believed would, and should, benefit from this amendment. For each, he presented their initial Guideline calculation, any applicable mandatory minimum, and the somewhat lower sentence they would receive after application of the amendment. Judge Rosenbaum concluded his testimony by making a request to the Subcommittee: “Please consider giving the judiciary the chance to do the job for which it was chosen and designated by the Constitution to perform. We work with this system, and those who operate in it every day of our lives. Please give us the tools to make it more fair and just.”⁶

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Id. at 1.

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He added, “[t]he present sentencing system sentences minor and minimal participants who do a day’s work, in an admittedly evil enterprise, the same way it sentences the planner and enterprise-operator who set the evil plan in motion and who figures to take its profits.” *Id.* at 3.

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Id. at 3. He reminded the subcommittee that the base Offense Level (which this amendment capped), was just the beginning of the inquiry. This kind of defendant would still receive a much stiffer sentence, for example, if they had a prior criminal record. *Id.* at 5.

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Id. at 11.

The bill was defeated and this “cap” amendment went into effect. However, certain members of the Republican majority on the Subcommittee and its staff were very unhappy with Judge Rosenbaum’s testimony. Afterwards, the Subcommittee Chairman requested that the judge turn over documentation to support his case examples, and with documents he supplied and their own research, the majority issued a scathing report that accused the judge of misconduct.⁷ Several months later, the Subcommittee also demanded that the judge provide documentation for all his downward departures from January 1999 to the present. When counsel for the judge balked, the Subcommittee threatened him with a subpoena.⁸ When this controversy became public, other members of Congress and many in the judiciary rose to defend Judge Rosenbaum. Eventually, Chief Justice Rehnquist agreed to a compromise under which a United States Magistrate from Virginia reviewed these records on behalf of the Committee. Afterwards, no further action against Judge Rosenbaum was taken by the Subcommittee. However, during the next term, Congress passed the 2003 Feeney Amendment, which substantially cut back on judicial sentencing discretion and required judges to provide more detailed explanations of their sentences.⁹

Wesley N. Hawkins

Offense: Possession with Intent to Distribute Crack Cocaine; Using a Firearm in Relation to Drug Trafficking Crime; Felon-in-Possession of a Firearm .

Sentence: 262 month (drugs) + 60 months (1st gun count) = 322 months (later reduced to 262 months after 1st gun count was vacated).

Projected Release Date: December 13, 2012.

At age twenty-five, Wesley Hawkins received a sentence of almost twenty-seven years for drug and weapons charges. The police discovered the evidence that led to his conviction because of a domestic dispute with wife, Canary,¹⁰ on October 21, 1993. She initially fled their apartment and called the police to report that Wesley had displayed a handgun during an argument. When the police arrived at the home, she also told them that he was selling drugs.



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See H.R. Rep. No. 107- 4689, at 9-10 (2002); Susan Schmidt, *Judge Accused of Misleading House Panel: Republicans on Sub-Committee Say Testimony on Drug Sentencing Was Inaccurate*, Wash Post., Nov. 6, 2002, at A2, available at 2002 WL 102569652.

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Rob Hotakainen & Pam Louwagie, *State's Chief U.S. Judge Might Face Subpoena; House Panel Investigating Sentencings in Drug Case*, Star Trib., Mar. 13, 2003, at 1A, available at 2003 WL 5530675.

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Judge Rosenbaum’s conflict with the Judiciary Committee is discussed in more detail in my article, *The War Within the War on Crime: The Congressional Assault on Sentencing Discretion*, 57 SMU Law Review 211, 228-29 (2004) (noting that some believe that the Feeney Amendment was in part, born from the controversy over Judge Rosenbaum’s testimony).

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The PSI identifies his wife as “Canary,” but notes that her birth name was Louise, suggesting that the former was a nickname, and an apt one under the circumstances. See *United States v. Hawkins*, 59 F.3d 723, 726 (8th Cir. 1995).

Wesley consented to a search of the apartment in which no gun or drugs were found.¹¹ However, when the police searched Wesley incident to his arrest for domestic assault, they found two keys in his pocket. He told the police the keys were for a storage locker in the apartment complex. The police obtained a search warrant for the locker which contained 19 grams of crack cocaine, a brick of powder cocaine weighing 2.2 pounds, and a loaded semi-automatic handgun.

Based on this evidence, Wesley was charged with possession with intent to distribute powder and crack cocaine, using a firearm during a drug trafficking offense, and because he had a criminal record, an additional charge of possession of a firearm by a felon. Wesley went to trial and was convicted. His wife testified on his behalf and recanted her statements to the police but to no avail, as the jury convicted on all counts.

Wesley had two juvenile adjudications for auto theft and simple assault, but it was his two adult convictions at age eighteen that severely impacted his Guidelines sentence in this case. In 1987, he was convicted of burglary in Fargo, North Dakota for breaking into several apartments with a juvenile co-defendant. He was originally sentenced to serve one year on this offense.¹² That same year, he was convicted of distribution of cocaine in federal court in Fargo and received a three year sentence. Because both these crimes are considered crimes of violence, he was treated as a career criminal by the Guidelines. This classification increased his Criminal History Category from IV to VI and required that his offense level increase from Level 28 to Level 34. Without the career criminal enhancement he would have been looking at a sentencing range of 170-197 months. With these enhancements, he was subject to a Guideline range of 262-327 months. In addition, the firearm count carried a statutory 60 month consecutive term, leading to a minimum sentence of 322 months.

At sentencing, Wesley's attorney first requested a reduction for acceptance of responsibility. His attorney was candid, saying that "without acceptance of responsibility [he] is facing 27 to 32 years in prison. I think if there's any opportunity whatsoever to give the man a two point reduction, we should do so in this case because the numbers are so overwhelmingly awful."¹³ Judge Rosenbaum denied this request, stating he made this decision even though "I know how long you are going to have to go away," and that it made him "very, very sad to do that."¹⁴ Defense counsel next made an untimely motion for a downward departure, arguing that his criminal history overstated the seriousness of his prior criminal behavior. He noted that Wesley's two prior felonies occurred when he was eighteen and that he had served relatively short sentences on those offenses. Judge Rosenbaum agreed to consider the motion but then denied that request as well.¹⁵

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The police did find 31 rounds of ammunition for a handgun in the apartment.

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After his federal drug conviction that year, his state probation was revoked and he served three years concurrent with the federal sentence.

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Sent. Tr. at 4. The government opposed the reduction.

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Sent. Tr. at 5. The judge did note that he had "thought hard about even an addition for possible obstruction of justice and thought it would be better not to do that." Sent. Tr. at 4. Neither the probation officer who prepared the PSI nor the government recommended or requested an obstruction of justice enhancement.

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When it was Wesley's turn to speak, he first maintained his innocence and tried to explain why his wife's testimony at trial was truthful. He then stated that he didn't "think the prosecution was after the truth. I think they've been after conviction."¹⁶ He also complained that he was convicted by an all white jury and that there had been no witnesses who could testify that he had been selling drugs at the time. He asserted that since he had gotten out of jail the last time, he had been working and attending college classes and had not sold drugs since his last arrest in 1987.¹⁷ While he felt that the criminal justice system had done him great injustice, he told Judge Rosenbaum that he had been "a very just judge. . . . And all I can say is I appreciate your candor, and, and your fairness, but it hasn't been fair by everybody."¹⁸

Judge Rosenbaum responded to these comments in several ways. He told Wesley that he thought the verdict was fair and supported by the facts. On the other hand, he said that he "will take whatever steps as I am able to do. . . . I will sentence you according to the Guidelines at the lowest number that I'm able to give you. [But that] is a precious small remedy."¹⁹

After pronouncing the sentence, Judge Rosenbaum had additional things to say to Wesley. He first addressed their relative ages, telling him that

You are essentially the same age that I was when I came out of law school. . . . I'm now approximately the age that you will be when you are released. And I suspect standing where you are you are looking at an old man. I plan on being older some day, but I don't know how many more of those you get.²⁰

The judge then spoke very simply to him about why in his view, the punishment did not fit the crime

At this point, he again stated that he was "not pleased with the sentence which I will impose in a moment." Sent. Tr. at 13.

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Sent. Tr. at 10.

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Wesley reports that he worked at a Days Inn Hotel when he first got out of federal prison and he was placed in a halfway house. When he returned to Minneapolis, he worked at a Pizza Hut as an assistant manager while he obtained his state certificate as a nursing assistant. He then did in-home care as a nursing assistant for about a year until the hours conflicted too much with his class schedule at college. He switched to working as a security guard at a shelter in South Minneapolis where he was employed at the time he was arrested.

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Sent. Tr. at 11.

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Sent. Tr. at 13. Judge Rosenbaum also admitted that he didn't "know what to say to someone who's going to be going for better than 20 years. I mean, if I say anything particularly useful, you'd forget it anyway in 20 years. Every human would. And I don't know whether I have anything useful to say."

Sent. Tr. at 14.

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Sent. Tr. at 18.

The Court is comfortable that you committed this crime. That having been said, you did not do 25 years of bad, or 27 years of bad. You just did some bad stuff. If I had a choice I would have sentenced you hard for having a weapon under these circumstances and for dealing dope under the circumstances, and having access to that dope, but in this Court's view, hard would have been ten years, at the long side 15, at the far outside if you add five on the back end.²¹

Lastly, Judge Rosenbaum explained why he felt the need to mention his personal views:

I mention these things first of all to indicate why I'm going to the bottom of the Guidelines. There's simply no reason to confine a man until he becomes completely unproductive in the world. That is bad policy. The other reason, and I trust you will not remember these words precisely, but they may be of some use to you when there does come a day when I hope that we will remake part of our sentencing system and reconsider exactly what we are doing here. And there will be a record of the judge who saw this case, and the judge who . . . saw a person who made a terrible mistake after having done some bad things before. Sir, you did not do well, but you did not do 27 years bad. . . . And to that extent, that statement would be available to you to present to someone in hopes that they will ameliorate what has happened here.²²

Earlier in the sentencing, Wesley's attorney remarked that the Sentencing Commission "in all its knowledge" hasn't "dealt with the human being in the case. . . . They've never read about his background, they've never know the hopes and dreams that he has."²³ From the PSI, however, one can discern some of the conflicts that led Wesley to trouble at such an early age. He was raised by his mother and his stepfather, and because his stepfather was in the service, they lived in Hawaii, Japan, Germany, and Ohio while he was growing up. The family eventually settled in Minot, North Dakota where social services reports referenced in the PSI suggest that his stepfather was consistently physically abusive to Wesley and his mother. As a result, Wesley reportedly ran away from home on more than one occasion and he later dropped out of school in the 11th grade.²⁴ After his juvenile adjudications, he was committed to a training facility until age eighteen, and upon his release, he committed his two adult offenses and was again incarcerated.

During his first federal prison term, and after he was released, Wesley began taking college courses and was approximately forty credits shy of a four year degree when he was arrested in this case. He had also moved away from Fargo to Minneapolis where he married his wife, Canary, in 1993. Although they had no children together, Wesley had been helping to care for his wife's children from a prior relationship.²⁵

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Sent. Tr. at 18.

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Sent. Tr. at 18-19.

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Sent. Tr. at 8.

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He obtained his GED in 1986.

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At the time of sentencing, he was still in touch with his wife but was unsure of the future of his marriage given the lengthy term he was facing. They later divorced.

In 1996, as required by a subsequent Supreme Court decision, Judge Rosenbaum vacated Wesley's 60 month consecutive sentence for using the firearm during a drug trafficking offense because the gun had not been actively carried or brandished.²⁶ However, he denied Wesley's renewed motion for a downward departure and that decision was upheld on appeal.²⁷ As a result, Wesley's sentence is now 262 months.

In prison, Wesley has converted to Rastafarianism and he has taken a Swahili name to reflect his African heritage.²⁸ He writes that his religion teaches "respect and compassion for humanity."²⁹ His faith helps sustain him as his relationships with his family are strained due to his lengthy incarceration. Still, he has maintained strong ties with his sister Shasta, who continues to visit him when she can with her two children and he has recently begun talking to his step-father again after years with little contact.³⁰

He reports that his mother has told him that it is too difficult for her to come to prison to see him, but he understands her feelings and her fears for him. He writes, "I simply try my best to convince her that I'm okay. [I] can't really express that it's killing me inside to be losing the most productive years of my life inside prison. I can't tell her how miserable I am that I don't have any children and how much I would like at least one. I can't tell her how I've gotten through the last eleven years because sometimes I don't even know how I did it."³¹

Finally, Wesley writes that he "doesn't want to be portrayed as the dumb or illiterate black man who, because he was abused by his step-father, couldn't function in normal society and therefore couldn't stay out of prison. Yes, I had a difficult upbringing but I can function in society and can be very successful if given the opportunity."³²

Compiled from Sentencing Transcript, PSI, PACER docket sheet, appellate opinions, inmate letters, Congressional testimony and subcommittee report, newspaper articles.

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See *United States v. Hawkins*, 116 S.Ct. 1257 (1996). Wesley's conviction at trial was otherwise upheld. See *United States v. Hawkins*, 59 F.3d 723 (8th Cir. 1995).

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See *United States v. Hawkins*, 124 F.3d 209 (8th Cir. 1997).

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He now goes by the name of Yarima Karama Ashanti but continues to use his birth name in the federal prison system.

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Undated letter to the author at 3 (on file with author).

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He writes that he no longer has any relationship with his ex-wife and that his marriage had no chance given her role in getting him arrested. He writes that he "has no hatred or animosity for her at this time, we just had no chance of making it together after that." He has some infrequent contact with his step-children but "they are both young women now and are trying to build their own lives and foundations." Undated letter to author at 4 (on file with author).

31

Id. at 5.

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Id. at 2.