

## **Statement of F. James Sensenbrenner, Jr. Introduction of H. Res. 916**

**July 17, 2006**

Regrettably, today I am forced to introduce this Resolution calling for an inquiry into grounds for the impeachment of U.S. District Court Judge Manuel L. Real, from the Central District of California. This Resolution has become necessary due to a breakdown in the judicial branch's enforcement of the judicial discipline statute Congress enacted in 1980. When the judicial branch has failed to address serious allegations of judicial misconduct, as the Ninth Circuit arguably has in this matter, the Constitution provides the Congress only one course of action: opening an impeachment inquiry.

I would caution my colleagues and others not to jump to any conclusions in this matter. Today's Resolution merely allows the House Judiciary Committee to open an investigation to determine the facts. Only after the House Judiciary Committee has conducted a fair, thorough, and detailed investigation, will Committee members be able to consider whether Articles of Impeachment might be warranted.

The introduced Resolution ensures that the investigation will be referred to the House Judiciary Committee. It is modeled after the last three impeachment resolutions that the House used to investigate, respectively, Judge Harry E. Claiborne (1986), Judge Alcee L. Hastings (1988), and Judge Walter L. Nixon (1989). All three were later impeached and removed from office based on the drafting of more detailed articles reported by the Committee after the investigations were completed.

According to press reports and legal filings made public, in February 2000 Judge Real allegedly interceded on behalf of a defendant known to him in a joint bankruptcy and California state unlawful-detainer action. The defendant reportedly was going through a messy divorce and was ordered to vacate a home that was held in trust by her husband's family. The defendant filed a bankruptcy petition that automatically stayed eviction proceedings in October 1999, but the stay was eventually lifted. The defendant, represented by counsel, then signed a stipulation that allowed the state court to issue an eviction notice in February 2000, approximately 10 days before Judge Real allegedly interceded.

Judge Real allegedly received *ex parte* communications from the defendant and through third parties about the matter before he took action. Judge Real was supervising the defendant as part of her probation in a separate criminal case in which she had pled guilty to perjury and loan fraud.

Judge Real withdrew the case from the bankruptcy court and enjoined the state eviction proceeding. He allegedly gave no reasons for his assertion of jurisdiction over the case or his rulings. The defendant was allowed to live rent-free in the home for a period of years. When the trustee appealed by *mandamus* to the Ninth Circuit, Judge Real transferred the case to another district judge. The trustee reclaimed the property on appeal but

reportedly lost at least \$35,000 in rent during the proceedings.

According to news reports, in February 2003 a private citizen filed a complaint against Judge Real for his conduct in the bankruptcy and unlawful-detainer actions. This complaint reportedly was dismissed twice by the Chief Judge of the Ninth Circuit, even though the Judicial Council in the second case reportedly recommended that further investigation take place regarding *ex parte* communications between Judge Real and the litigant.

Judge Alex Kozinski wrote in his dissenting opinion for the Judicial Council of the Ninth Circuit, “The fact of the matter is that the judge’s conduct here caused real harm. It certainly harmed innocent creditors to the tune of \$50,000 or more. Worse, it harmed public confidence in the fair administration of justice in the courts of this circuit. The prohibition against *ex parte* communications, rules of procedure, principles of law – all of these are not trinkets that judges may discard whenever they become a nuisance. Rather, they are the mainstays of our judicial system, our guarantee to every litigant that we will administer justice, as our oath requires, ‘without respect to person’. . . . [T]he majority’s exiguous order seems far more concerned with not hurting the feelings of the judge in question. But our first duty as members of the Judicial Council is not to spare the feelings of judges accused of misconduct. It is to maintain public confidence in the judiciary by ensuring that substantial allegations of misconduct are dealt with forthrightly and appropriately. This the majority has failed to do.”

Judge Real’s actions are under further review by the Ninth Circuit Court of Appeals and have been the subject of numerous news reports by the *Los Angeles Times* and others.

Based upon these news reports and legal proceedings made public, Judge Real’s behavior in the bankruptcy and unlawful-detainer actions *may* constitute impeachable conduct. Some of the issues that I hope will be reviewed during the Committee investigation include –

- His intercession on behalf of a litigant known to him;
- His alleged *ex parte* communications with the litigant known to him;
- His assertion of jurisdiction over proceedings in which he lacked jurisdiction;
- His alleged failure to explain his assertion of jurisdiction to counsel;
- His alleged failure to provide any legal authority for his actions;
- His reply, on at least one occasion, to counsel when questioned as to the basis of a ruling (“Just because I said it, Counsel.”).

I expect the next step in this process to involve the establishment of a bipartisan impeachment inquiry team in the near future.