THE SUBCOMMITTEE ON COURTS, THE INTERNET AND INTELLECTUAL PROPERTY

TESTIMONY OF THE HONORABLE MANUEL L. REAL SEPTEMBER 21, 2006

We are here today because a lawyer who has had a personal vendetta against me for over twenty years filed a complaint accusing me of misconduct in my handling of a bankruptcy case. That lawyer had no personal involvement in the bankruptcy case and his accusations were based solely on his speculation. His accusations are untrue. Though I regret the circumstances that bring me here, I welcome the opportunity to respond to those accusations.

I. PERSONAL BACKGROUND

My parents were immigrants from Spain who came to California and settled in San Pedro, California. I was born and raised in San Pedro and have lived there my entire life. During World War II, I served in the United States Navy and was discharged with the rank of Lieutenant (JG). After the war, I attended the University of Southern California and then Loyola Law School, where I graduated in 1951.

I was an Assistant United States Attorney for three years after law school, and then went into private law practice. In 1964, I was appointed as the United States Attorney for what was then the Southern District of California. I served in that position until 1966, when President Lyndon Johnson nominated me to be a United States District Judge for the Central District of California.

On November 17th of this year, I will have been a United States District Judge for forty years. During that time, I have handled over 31,000 cases and have presided over thousands of civil and criminal trials. From 1982 to 1993, I was privileged to serve as the Chief Judge for the Central District of California. I have also served as an elected member of the Judicial Conference of the United States and as a member of the Ninth Circuit Judicial Council and Judicial Conference.

In my years as a federal judge, I have won various awards, including the Award of Merit from the Urban League, the Distinguished Achievement Award from Loyola Law School, the Foundation for Improvement of Justice Award, and the Los Angeles County School District Award.

In the 1970s, I handled a desegregation case involving the Pasadena public schools and was the first district judge outside of the South to order a public school system to integrate, and I now have a California elementary school named after me. Needless to say, that ruling, along with several other tough decisions I have had to make, generated significant controversy and public attention. Every case that a judge decides disappoints the losing party and leaves one of the litigants unhappy.

In my nearly forty years on the bench, I have had several complaints of judicial misconduct made against me. However, none of them, including the one that brings me here today, has been found to have any merit, and I have never been sanctioned for any judicial misconduct

II. DEBORAH CANTER'S BANKRUPTCY ACTION

Because of the complaint of misconduct and the criticism that followed Judge Kozinski's intemperate dissent to the Judicial Council's opinion dismissing that complaint, my involvement in the bankruptcy action filed by Deborah Canter has been blown out of proportion. In truth, Ms. Canter was just one of the more

than one thousand criminal defendants who have appeared before me, pleaded guilty and been placed on probation.

I have not had any contact with Ms. Canter other than in open court or at open-door probationary meetings in my office, where she was always accompanied by her Probation Officer. Those meetings lasted no more than fifteen minutes. Other than that, I have never met with or spoken to Ms. Canter or received any letter or other written communication from her.

I became involved in Ms. Canter's bankruptcy action solely because lawyers for her father-in-law had illegally filed in her bankruptcy action a confidential Pre-Sentence Report from her criminal case. Pre-Sentence Reports of criminal defendants are not public documents, but rather are confidential records of the court. The Central District Criminal Rules require that the documents be filed under seal. As I was the judge presiding over her criminal action, Ms. Canter's Pre-Sentence Report could only be released by my order. In my nearly forty years on the bench, I had never had another criminal case where someone misused a confidential Pre-Sentence Report.

A. Ms. Canter's Probation

Ms. Canter entered a guilty plea to charges of making false statements and loan fraud. On April 13, 1999, I sentenced her to five years of probation under the supervision of the U.S. Probation Office and ordered her to perform 2,000 hours of community service, which is a significant amount of community service. I also ordered her to report to me with her Probation Officer every 120 days as directed by the U.S. Probation Office. She did not receive preferential treatment, but was treated the same as all criminal defendants who pleaded guilty and whom I placed on the 120-day probation program.

Approximately eighty percent of the criminal defendants that I place on probation are required to report to me every 120 days. I have won awards for my

program of personally supervising probationers through these periodic meetings. I have been told by Probation Officers that they like the program and that the probationers on it have fewer violations. The probationers who report to me know that the judge who sentenced them cares about their efforts and problems in rehabilitating themselves.

I had two 120-day meetings with Ms. Canter before I withdrew the bankruptcy reference. The first meeting was on August 23, 1999, and Ms. Canter was accompanied by her Probation Officer, Randall Limbach.

Before that meeting, Mr. Limbach sent me a short status report disclosing that Ms. Canter was involved in divorce proceedings and was seeking to gain full custody of her daughter. That issue also was mentioned at the 120-day meeting. Status reports are prepared for all probationers and routinely sent to me in advance of the 120-day meetings.

At my second 120-day meeting with Ms. Canter on January 24, 2000, she told me that attorneys for creditors had filed the confidential Pre-Sentence Report in her bankruptcy action and she was concerned that this might discredit her in the eyes of the bankruptcy judge. She also told me that the report had been filed in state court proceedings, but did not tell me which proceedings. At the meeting, Ms. Canter gave me a cover sheet from a document filed in her bankruptcy action.

I told her to contact her Federal Public Defender regarding the misuse of the Pre-Sentence Report. It was my expectation that her Public Defender would file a motion requesting some sanction against the offending lawyers who had misused a confidential court document.

B. <u>The Withdrawal of the Bankruptcy Reference</u>

After my January 24, 2000 meeting with Ms. Canter and her Probation Officer, I issued an order withdrawing the reference of Ms. Canter's bankruptcy action, which I signed on January 27, 2000. This meant that Ms. Canter's

bankruptcy case would be transferred to me for future handling. As a district judge, I am authorized by statute to withdraw the reference of a bankruptcy case. Though this is usually done at the request of a party to the bankruptcy, the statute specifically permits me to do so without such a request. This was the second time I had withdrawn the reference of a bankruptcy case.

I took over Ms. Canter's bankruptcy case because she told me during the 120-day meeting that her Pre-Sentence Report had been improperly filed in her bankruptcy action and I wanted to determine whether this was true.

On February 24, 2000, the bankruptcy file was transferred to my chambers. After the file arrived, I personally reviewed it and saw that a Request for Judicial Notice had been filed attaching Ms. Canter's Pre-Sentence Report as an exhibit.[1] The Request was filed in support of a motion to lift the automatic stay that was imposed when Ms. Canter filed bankruptcy, and which prevented her father-in-law from prosecuting an unlawful detainer action against her. The motion specifically discussed the confidential Pre-Sentence Report. These documents confirmed Ms. Canter's statements during the January 24, 2000 meeting. The Request for Judicial Notice also contained a copy of the complaint in the unlawful detainer action. The bankruptcy file also showed that the automatic stay had been lifted.

I concluded that the Pre-Sentence Report had been improperly used to lift the automatic stay in order to proceed with the unlawful detainer action against Ms. Canter.

I asked my secretary, Loyette Fisher, to find out the status of the unlawful detainer action. She contacted a state court clerk, who faxed her a copy of the

[1] December 30, 1999 Request for Judicial Notice, without attachments except for the cover page of the Pre-Sentence Report, is attached hereto as Exhibit A. In addition to the documents attached hereto, I am concurrently submitting an Appendix of Exhibits that I believe are relevant to the Subcommittee's investigation.

docket sheet showing the status of the lawsuit. I learned from that document that a judgment had been entered in the unlawful detainer action, shortly after the automatic stay was lifted. Based upon this information, I issued an order on February 29, 2000 staying the unlawful detainer action. I entered the stay order to preserve the status quo in the unlawful detainer action pending further proceedings in the bankruptcy action.

Ms. Canter's Federal Public Defender filed a motion regarding the misuse of her Pre-Sentence Report in March 2000. At the hearing on the motion, I was advised that the father-in-law's bankruptcy attorney and the husband's divorce lawyer would "withdraw" all copies of the Pre-Sentence Report filed with the courts.

I was still concerned that the Pre-Sentence Report had influenced the state divorce court judge's rulings regarding spousal support and child custody issues. Therefore, I ordered the parties to find out whether the Pre-Sentence Report had been considered by that judge in making rulings and, in the meantime, continued the hearing until July 2000. The parties subsequently filed a status report saying they had a conference call with the state court judge who said the Pre-Sentence Report had not influenced him. Accordingly, I canceled the July hearing.

In June 2000, the Canters sought to revive the unlawful detainer action by filing a motion to vacate the order staying that action. I denied the motion because there were two pending actions (the state court divorce action and the bankruptcy action) where the parties were contesting the ownership of the house and I concluded that the determination of that issue should be made in one of those actions.

In May 2001, Ms. Canter's father-in-law filed a second motion to vacate the February 20, 2000 stay order. His attorneys now argued that the state divorce court had determined the issue of ownership of the house and, therefore, the stay

should be lifted so the unlawful detainer action could proceed. They also filed a motion to dismiss the adversary complaint filed in the bankruptcy action by Ms. Canter in which she contended she had an ownership interest in the house.

At the June 2001 hearing, I granted the motion to dismiss the adversary complaint, but gave Ms. Canter an opportunity to file an amended complaint. I did so because I concluded that while the state divorce court had found that Ms. Canter did not have a community property interest in the house, she might be able to allege a claim based upon other legal theories. I denied the motion to vacate the stay because I had given Ms. Canter an opportunity to amend her adversary complaint. I felt that, if she still failed to state a claim in the amended pleading, the father-in-law could simply re-file the motion to vacate the stay.

At the end of this hearing, the attorney for Ms. Canter's father-in-law, Herbert Katz, asked me to state the reasons for my ruling. I told him "because I said so" or words to that effect. Later, I would get much criticism for that comment. However, I had given Mr. Katz a full opportunity to make an oral argument regarding the motion, and did not want to engage in further argument with him over my reasons for denying it. It has never been my practice to explain the reasons for my rulings on motions like this one and I have made similar comments to many other lawyers.

Sometime in the previous month, May 2001, I had a conversation with Judge David Carter regarding the possible transfer of the Canter bankruptcy to him.

I had two concerns that led me to consider transferring the case. First, Judge Carter was handling Anna Nicole Smith's bankruptcy case that raised similar issues as Ms. Canter's adversary complaint. Second, I felt there was a possibility that Ms. Canter's adversary complaint might be tried and I was uncomfortable about trying the case because she was a probationer. Though I had discontinued

my 120-day meetings with Ms. Canter when I took over her bankruptcy case, she was still one of my probationers.

On July 9, 2001, I signed the order transferring Ms. Canter's bankruptcy action to Judge Carter.

In my discussions with Judge Carter, I did not suggest to Judge Carter how he should handle the case after the transfer. I had nothing further to do with Ms. Canter's bankruptcy after ordering the transfer of the case to Judge Carter.

III. MR. YAGMAN'S COMPLAINT OF JUDICIAL MISCONDUCT

Ms. Canter's father-in-law appealed my order staying the unlawful detainer action. On August 15, 2002, the Court of Appeals issued an opinion stating I had abused my discretion when I withdrew the reference in Ms. Canter's bankruptcy action without "good cause" and ordered a stay of the unlawful detainer action. Ms. Canter's bankruptcy lawyer filed a brief in that appeal, but did not tell the Court of Appeals my reason for withdrawing the reference. Therefore, the Court of Appeals did not know about my concern over the misuse of Ms. Canter's Pre-Sentence Report in the bankruptcy action when the court concluded that I did not have "good cause" to do so.

A Los Angeles lawyer, Stephen Yagman, read the Court of Appeals' opinion in the Canter bankruptcy action and filed a complaint against me in March 2003, accusing me of misconduct in my handling of that case. Mr. Yagman was not a party to the bankruptcy action or the lawyer for any party in that proceeding or any other lawsuit involving Ms. Canter, and he knew nothing about the facts of the case.

In 1984, I sanctioned Mr. Yagman $250,000, the amount of the other side's attorneys' fees, for his persistent and willful disregard of the federal rules and his outrageous courtroom behavior in a defamation case I was handling. *Matter of Yagman*, 796 F.2d 1165 (9th Cir. 1986). Though the Court of Appeals reversed the

sanction portion of my order, Mr. Yagman has had a personal vendetta against me ever since.

I am not the only one. Mr. Yagman has a practice of making outrageous statements against federal judges whom he does not like so that they will disqualify themselves from hearing his cases. Sometimes this is successful. As an example, Mr. Yagman accused another district judge of being "drunk on the bench," "anti-Semitic," and "dishonest." A three-judge disciplinary panel found those accusations to be patently false and suspended Mr. Yagman for two years, finding that he had made the comments for the specific purpose of getting the judge to recuse himself in future cases. *Standing Committee v. Yagman*, 856 F. Supp. 1384, 1395 (C.D. Cal. 1994).

Mr. Yagman appealed and the Ninth Circuit reversed on First Amendment grounds in an opinion written by Judge Alex Kozinski. *Standing Committee v. Yagman*, 55 F.3d 1430 (9th Cir. 1995).

Mr. Yagman was also suspended from practicing law by the California State Bar on two different occasions, and again by the New York State Bar. In June of this year, he was indicted by the U.S. Attorney on nineteen counts of income tax evasion, bankruptcy fraud, and money laundering.

What was Mr. Yagman's complaint against me? Mr. Yagman said he read the Court of Appeals opinion in Ms. Canter's bankruptcy and then learned from the court's records that Ms. Canter was one of my probationers. Based on this alone, Mr. Yagman accused me of acting improperly in "oddly" putting a "comely" female criminal defendant on probation "to himself, personally" and in withdrawing the bankruptcy reference in order to "benefit an attractive female."[2] Both accusations were entirely untrue.

[2] Complaint No. 03-89037, attached hereto as Exhibit B.

Pursuant to the Ninth Circuit Rules on Complaints of Judicial Misconduct, Mr. Yagman's complaint was reviewed by Chief Judge Mary M. Schroeder and, on July 14, 2003, the Chief Judge entered an order dismissing the complaint.[3]

The Chief Judge found that Mr. Yagman's "allegations of inappropriate conduct were not substantiated," since Mr. Yagman had not provided any proof to support his allegation. In addition, the Chief Judge found that my decisions in the bankruptcy case had already been reviewed by the Court of Appeals and, therefore, Mr. Yagman's complaint had to be dismissed under the Ninth Circuit Rules.

Mr. Yagman filed a petition for review of the Chief Judge's dismissal with the Judicial Council on August 7, 2003. In that petition, Mr. Yagman questioned whether his complaint had been adequately investigated and again accused me of being "salaciously cozy" with Ms. Canter. In response to Mr. Yagman's criticism, the Judicial Council conducted its own investigation of the facts underlying Mr. Yagman's complaint. The Judicial Council's staff, under the personal direction of Judge Kozinski, interviewed at least *fifteen* witnesses regarding Mr. Yagman's allegations.

After conducting this investigation, the Judicial Council remanded the complaint to the Chief Judge for further investigation and directed her to investigate whether I entered my orders in the bankruptcy case based upon an improper *ex parte* communication with Ms. Canter. The Judicial Council did this because Ms. Canter's former bankruptcy attorney, Andrew Smyth, had told one of the Judicial Council's investigators that his wife, who was also his secretary, told him she had helped Ms. Canter prepare a letter to me asking for my help in preventing her eviction and that Ms. Canter said she delivered the letter to me.

[3] Chief Judge Schroeder's July 14, 2003 Order and Memorandum, attached hereto as Exhibit C.

During the summer of 2004, Chief Judge Schroeder again reviewed Mr. Yagman's complaint, this time in light of the additional issues raised in the Judicial Council's remand order. Her investigator spoke to Ms. Canter, who denied that she had ever written or delivered a letter or any other document to me or had had any *ex parte* communications of any kind with me.[4] My counsel also filed a brief with Chief Judge Schroeder, attaching the declaration of Ms. Canter's Probation Officer relating the discussions regarding the misuse of the confidential Pre-Sentence Report that occurred during my January 24, 2000 meeting with Ms. Canter, and a declaration from my secretary confirming that I had not received any *ex parte* communication from Ms. Canter.[5]

After a review of this information, Chief Judge Schroeder again dismissed the complaint.[6]

In her order of dismissal, the Chief Judge noted that the Judicial Council's remand order had "focused on the ex parte nature of communications between the judge and the defendant/debtor" and, therefore, she had made an additional inquiry, "including sworn declarations and other documentary evidence." Based upon that information, the Chief Judge concluded that "there is no basis for a finding that credible evidence exists of a letter or other 'secret communication' having passed between the defendant/debtor and the district judge."

Mr. Yagman appealed the Chief Judge's second order of dismissal to the Judicial Council. On September 29, 2005, the Judicial Council denied his petition

[4] September 9, 2004 Declaration of Deborah Canter, attached hereto as Exhibit D.

[5] August 5, 2004 Declaration of Randall Limbach and August 6, 2004 Declaration of Loyette Lynn Fisher, attached hereto as Exhibits E and F.

[6] Chief Judge Schroeder's November 4, 2004 Supplemental Order and Memorandum, attached hereto as Exhibit G.

for review.[7] The majority's opinion specifically dealt with the issue of whether there had been an *ex parte* communication with Ms. Canter, stating:

> The Judicial Council's remand to the Chief Judge indicated concern that the district judge may have received an improper ex parte letter from the probationer, and that the withdrawal of the reference may have been based upon information contained in the alleged letter. *After an investigation, the Chief Judge found that no such letter had been transmitted to, or received by, the district judge. We will not upset that factual finding.*

425 F.3d at 1181 (emphasis added).

The Judicial Council's majority opinion (joined by seven of the ten judges on the Judicial Council) affirmed the Chief Judge's dismissal of Mr. Yagman's complaint. *Id.* at 1182. Three judges dissented, including Judge Kozinski who wrote what I believe to be an intemperate, thirty-nine-page dissenting opinion, reflecting his conclusion that I had committed misconduct. The other two judges who dissented did not join in Judge Kozinski's opinion.

Mr. Yagman requested the Judicial Conference of the United States to review the Judicial Council's opinion. On April 28, 2006, the Judicial Conference Committee issued a decision on that appeal, holding that "Congress gave the Judicial Council final review authority" over the Chief Judge's order of dismissal.

Immediately after the Judicial Council issued its opinion affirming the second dismissal of Mr. Yagman's complaint, he filed a second complaint against me. In his new complaint, Mr. Yagman alleged that I was untruthful in my

[7] *In Re Complaint of Judicial Misconduct*, 425 F.3d. 1179 (9th Cir. 2005), attached hereto as Exhibit H.

response to the Judicial Council's inquiries regarding whether I had an improper *ex parte* communication with Ms. Canter.

A Special Committee appointed by Chief Judge Schroeder held hearings on Mr. Yagman's second complaint in August and I anticipate that the committee will issue a report and recommendation to the Ninth Circuit Judicial Council in the near future.

IV. MR. YAGMAN'S ACCUSATIONS ARE UNTRUE

In his dissent from the Judicial Council's opinion affirming the dismissal of Mr. Yagman's first complaint, Judge Kozinski stated at length why he concluded that there had been an improper *ex parte* communication with Ms. Canter that led me to withdraw the reference and enter the order staying the unlawful detainer action. Judge Kozinski principally relied on the following assumptions to reach those conclusions:

- Judge Kozinski concluded that my October 9, 2003 memorandum to the Judicial Council shows that I acted based upon an *ex parte* communication. 425 F.3d at 1185-87.
- Judge Kozinski believed the story reported by Ms. Canter's former lawyer, Andrew Smyth, that his wife, Michelle Smyth had typed a letter for Ms. Canter and that Ms. Canter later told his wife she had given it to the judge. *Id.* at 1189-90.
- Judge Kozinski concluded that because the judgment in the unlawful detainer action was entered after the January 24, 2000 120-day meeting, there had to have been an *ex parte* communication from Ms. Canter in order for me to know that the judgment had been entered. *Id.* at 1190-92.

These assumptions are wrong and I will explain to the Subcommittee why they are wrong.

A. The October 9, 2003 Memorandum

As part of the Judicial Council's consideration of Judge Schroeder's dismissal of Mr. Yagman's original complaint, Judge Kozinski wrote to me on September 10, 2003, asking me to explain why I withdrew the reference, why I entered the stay order, and whether I had any communication with Ms. Canter regarding these or related issues.

When I received this letter, I was angry over Judge Kozinski's inquiry. I was angry for three reasons: First, Mr. Yagman had sent Judge Kozinski a copy of the first complaint in violation of the Ninth Circuit Rules, leading me to conclude that there was some connection between Judge Kozinski and Mr. Yagman. Second, I believed that Judge Schroeder had properly dismissed Mr. Yagman's complaint. Third, Mr. Yagman had accused me of having a "salaciously cozy" relationship with Ms. Canter at the time of my marriage to Elizabeth Sykes in March 2000.

In preparing my response to Judge Kozinski's September 10, 2003 letter, I did not review Ms. Canter's bankruptcy file because the file had been transferred to Judge Carter in July 2001, and I did not consult with any of my staff or law clerks regarding the response. As a result, my response to Judge Kozinski's letter is inaccurate in its chronology of what I knew when I withdrew the reference and imposed the stay order.

In my October 9, 2003 memorandum, I responded to the question "why did you withdraw the reference" by stating, in part, that "a person who was a probationer in a criminal case informed me that the home in which she and her husband were living at the time of their divorce had been given to them by her husband's parents . . . [and] [s]he was contesting her right to occupancy in the divorce court." Eventually, I did learn of these facts, but only at a later date from pleadings filed in the case. I did not know this information when I issued the order

withdrawing the reference, since it had not come up at my January 24, 2000 meeting with Ms. Canter and Mr. Limbach. Mr. Limbach confirmed what was discussed at this meeting in his declaration. (Exh. E.)

In the October 9, 2003 memorandum, I also said that I learned of the unlawful detainer action at one of my 120-day meetings with Ms. Canter. This, too, is inaccurate. I did not discuss the unlawful detainer action with Ms. Canter at either of the 120-day meetings I had with her. Mr. Limbach, Ms. Canter's Probation Officer, also confirmed this in his declaration. (Exh. E.) I first learned of the unlawful detainer action when I reviewed the bankruptcy file in late February 2000.

Though the October 9, 2003 memorandum is inaccurate as to the timing of when I learned certain information, it does accurately reflect my concern that Ms. Canter's Pre-Sentence Report had been improperly used in the state divorce action and in the bankruptcy action. I learned of this during my January 24, 2000 meeting with Ms. Canter and this was my motivation for withdrawing the reference and issuing the stay order.

Judge Kozinski's conclusion, therefore, that my October 9, 2003 memorandum confirms that an *ex parte* communication with Ms. Canter "must have" occurred is wrong. It is wrong because my memorandum's recitation of the information I had available when I took those actions is incorrect. The memorandum is incorrect because I reacted emotionally when I received Judge Kozinski's inquiry and prepared my response without adequate research or reflection.

I now realize that my failure to respond more carefully and accurately to Judge Kozinski's initial inquiry was a mistake. If I had done so, I doubt that we would be here today.

B. Michelle Smyth's Story

The second "fact" relied upon by Judge Kozinski to support his conclusion that I withdrew the reference and imposed the stay based on an *ex parte* communication was the story of Michelle Smyth, the secretary and wife of one of Ms. Canter's former lawyers. Ms. Smyth told Judge Kozinski's investigator that she had helped Ms. Canter prepare a letter to me regarding her divorce and that Ms. Canter had delivered the letter to me. 425 F.3d at 1189-90.

In contrast with Ms. Smyth's story, Ms. Canter signed a declaration prepared by the Judicial Council's investigator in which she denied that she had ever written or delivered a letter or any other document to me or to anyone in my chambers. She also denied that she had ever met with or had any conversation with me outside of the presence of counsel or a probation officer.

I confirmed the statements of Ms. Canter in a letter that was submitted to Chief Judge Schroeder.[8] In that letter, I truthfully stated that I had never received any letter or written communication of any sort from Ms. Canter or anyone acting for her concerning my intervening on her behalf to prevent her eviction. I also confirmed that I had never been alone with Ms. Canter and had only met with her in the presence of her Probation Officer or in open court.

In addition, my secretary, Loyette Fisher, signed a declaration stating that she had carefully reviewed the files in my chambers relating to Ms. Canter and did not find any letter or other written communication from Ms. Canter to me. (Exh. F.) She also declared that she did not recall ever having received or seen any letter from Ms. Canter to me.

[8] August 10, 2004 letter from Manuel L. Real to Don Smaltz, attached as Exhibit I.

Based upon this information, Chief Judge Schroeder dismissed Mr. Yagman's first complaint, concluding that despite Ms. Smyth's story, there was insufficient evidence to find that there had been an *ex parte* letter or declaration that led me to withdraw the reference and re-impose the stay.

I now know that Ms. Smyth has changed her story. In a recent interview, Ms. Smyth now says that it was not a letter that Ms. Smyth typed, but rather a sworn declaration on twenty-eight line pleading paper.[9]

I do not know why an employee of Ms. Canter's former lawyer would tell a story that is untrue, but I do know that I never received the letter (or declaration) from Ms. Canter that Ms. Smyth said she helped prepare.

C. Knowledge of the Unlawful Detainer Action

The third "fact" relied upon by Judge Kozinski was that the judgment in the unlawful detainer action was not entered until February 7, 2000. 425 F.3d at 1190-91. Based on this timing, Judge Kozinski concluded that Ms. Canter could not have told me of the judgment during the January 24, 2000 meeting and, therefore, I had to have learned of it in a subsequent *ex parte* communication from her.

As discussed above, when the bankruptcy files were routinely transferred to my chambers on February 24, 2000, I personally reviewed those files and learned of the unlawful detainer action. I then asked my secretary to check the status of that action and she obtained the docket sheet from the state court clerk. I learned from the docket sheet that a judgment had been entered and, based on that information, issued my February 29, 2000 stay order.

Judge Kozinski's speculation regarding the source of my knowledge of the unlawful detainer judgment is simply wrong.

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[9] September 19, 2006 Declaration of Eric L. Dobberteen, attached as Exhibit J.

V. CONCLUSION

The accusations of misconduct made against me by Mr. Yagman are untrue. I did not receive any *ex parte* communication from Ms. Canter. I did not make any rulings in her bankruptcy action based upon any such communication or "to benefit an attractive female" as alleged by Mr. Yagman, an accusation I find repugnant, particularly at my age. I hope that I have fully explained the history of my involvement in Ms. Canter's bankruptcy action and the reasons for my rulings in that action. If not, I welcome any questions the Subcommittee might have.

EXHIBIT A

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Attorney for Creditor Alan Canter and Canter Family Trust

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re

Deborah M. Canter

CASE NO. ~~LA99-49126-AA~~ SACV 01-688 DOC

(Chapter 13)

REQUEST FOR JUDICIAL NOTICE PURSUANT TO FEDERAL RULE OF EVIDENCE 201

[Filed Concurrently with The Canter Family Trust's Motion for Relief from the Automatic Stay]

Date: 1/26/2000
Time: 2:30 p.m.
Crtm: 1375

TO THE HONORABLE ALAN AHART, THE CHAPTER 13 TRUSTEE, EDWINA DOWELL, THE DEBTOR, AND ALL PARTIES OF INTEREST:

Pursuant to Federal Rule of Evidence, 201 (b),(c) and (d), the moving party requests mandatory and discretionary judicial notice of the following:

1. California Civil Code, Sections 1624 and 1946. Attached as **Exhibit A;**
2. Schedule J of the debtor in the instant case. **Exhibit B;**
3. The petitions and schedules of the prior bankruptcy cases filed by the debtor: case numbers 92-38435 (ch. 7), 96-10153 (ch. 13),

96-16058 (ch. 13), and 97-35894 (ch. 13). At the time of the filing of this motion copies were not available. True and correct copies will be obtained from the court archives and submitted under separate cover as **Exhibits C, D, and E** respectively.

4. The Criminal Judgment and probation report in United States v. Maristina Canter, Case No. 98-576-R . **Exhibit F.**

5. Documents filed with the county recorder of Los Angeles County as follows.

a.	Grant Deed of 9/11/91 to Alan and Elizabeth Canter on property located at 446 S. Highland, Los Angeles	**Exhibit G**
b.	Deed of Reconveyance to Alan and Elizabeth Canter of July 23, 1992 for 446 S. Highland, Los Angeles	**Exhibit H**
c.	Quitclaim deed from Alan and Elizabeth Canter of September 22, 1997 to the Canter Family Trust	**Exhibit I**

6. Unlawful detainer complaint in *Canter v. Canter*, Municipal Court case No. 99U18116. **Exhibit J.**

7. Verified Transcript of debtor's 341a hearing held on December 10, 1999. **Exhibit K.**

8. Interrogatories to and Debtor's Answers to Interrogatories, **Exhibit L.**

Dated: December 29, 1999

Respectfully submitted

Mark E. Brenner, Esq.
Attorney for Creditors Alan Canter and the Canter Family Trust

REQUEST FOR JUDICIAL NOTICE- EXHIBIT F- JUDGMENT AND PROBATION IN CRIMINAL CASE

UNITED STATES DISTRICT CO
LOS ANGELES, CALIFORNIA
PRESENTENCE REPORT

COURT NAME:	T/N: Deborah Maristina Romano	DICTATION DATE
CANTER, Maristina	AKA(s): CANTER, Deborah ROMERO, Deborah ROMEN, Deborah	October 27, 1998
		SCHED. SENT. DATE December 14, 1998

ADDRESS	LEGAL ADDRESS	DOCKET NO.
446 S. Highland Aveune Los Angeles, CA 90036 (323) 935-2520	Same	98-00576
		CITIZENSHIP United States

AGE	RACE	SEX	BIRTH DATE	BIRTH PLACE	EDUCATION
43	White	Female	2-27-55	Los Angeles, CA	12 years

MARITAL STATUS	DEPENDENTS	SOCIAL SECURITY NO.
Married	1 (Daughter)	548-94-0669

FBI NO.	U.S. MARSHAL NO.	OTHER IDENTIFYING NOS.:
Not received	13650-112	CA DL: N2384700 CII: None

OFFENSE

18 USC 1001: False Statements (Counts 1, 9 & 14 of 14-Count Indictment), Class D Felonies;
18 USC 1014: Loan Fraud (Count 5), Class B Felony

PENALTY

5 years pursuant to 18 USC 1001 [$250,000 maximum fine pursuant to 18 USC 3571(b)(3) as to Counts 1, 9, & 14]; 30 years and/or $1 million fine pursuant to 18 USC 1014 as to Count 5

CUSTODIAL STATUS	DATE OF ARREST
Released 6-16-98 on $50,000 Appearance Bond with affidavit of surety, no justification, and PSA supervision.	June 16, 1998

PLEA	VERDICT
Guilty, 8-24-98 (Counts 1, 5, 9 & 14)	

DETAINERS/CHARGES PENDING

None

OTHER DEFENDANTS

None

DATE OF NOTIFICATION	DEFENSE COUNSEL:
August 25, 1998	Guy Iverson (Federal Defender) 312 North Spring Street, Suite 1503 Los Angeles, CA 90012 (213) 894-2235

SENTENCING JUDGE	DATE PARTIES NOTIFIED	PROBATION OFFICER
HONORABLE MANUEL L. REAL	November 3, 1998	USPO KELLER, Ext. 6024 SUSPO BARNES, Ext. 5576
	DISCLOSURE DATE 09 1998	

EXHIBIT B

03-80037

COMPLAINT FORM
JUDICIAL COUNCIL OF THE NINTH CIRCUIT
COMPLAINT OF JUDICIAL MISCONDUCT AND DISABILITY

MAIL THIS FORM TO THE CLERK, UNITED STATES COURT OF APPEALS, P.O. BOX 193939, SAN FRANCISCO, CA 94119-3939. MARK THE ENVELOPE "JUDICIAL MISCONDUCT COMPLAINT" OR "JUDICIAL DISABILITY COMPLAINT." DO NOT PUT THE NAME OF THE JUDGE ON THE ENVELOPE.

SEE RULE 2(e) FOR THE NUMBER OF COPIES REQUIRED FOR FILING. 03-03-03

1. **Complainant's name:** STEPHEN YAGMAN

Address:
LAW OFFICE
YAGMAN & YAGMAN & REICHMANN & BLOOMFIELD
723 Ocean Front Walk
Venice Beach, CA 90291-3270
(310) 452-3200

Daytime telephone: ( )

2. **Name of judge complained about:** MANUEL L. REAL

Court: C.D. CAL.

3. Does this complaint concern the behavior of the judge in a particular lawsuit or lawsuits?
☑ Yes ☐ No

If "yes" give the following information about each lawsuit (use reverse side if there is more than one):

Court: C.D. Cal.

Docket Number: See attached

Are (were) you a party or lawyer in the lawsuit? ☐ Party ☐ Lawyer ☑ Neither

If a party, give the name, address, and telephone number of your lawyer:

Docket numbers of any appeals to the Ninth Circuit: See attached

4. Have you filed any lawsuits against the judge? ☐ Yes ☑ No

If yes, give the following information about each lawsuit (use the reverse side if there is more than one):

Court:

Present status of suit:

Name, address, and telephone number of your lawyer:

Court to which any appeal has been taken:

Docket number of the appeal:

Present status of appeal:

5. **Statement of Facts:** On separate sheets of paper, not larger than the paper this form is printed on, describe the facts and evidence that support your charges of misconduct or disability. *See* Rules 1(c) (proper

See attached

Stephen Yagman

EXHIBIT B

LAW OFFICES
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STEPHEN YAGMAN

February 7, 2003

Honorable Mary M. Schroeder
Chief Judge
230 North First Avenue
Phoenix, AZ 85025

Re: Complaint against U.S. Dist. Judge Manuel L. Real

Dear Judge Schroeder:

This letter is written to make a complaint against the above-named Judge pursuant to 28 U.S.C. § 372(c), based on the following.

In re Deborah M. Canter: Canter v. Canter, 2002 DJDAR 9407 (9th Cir. August 15, 2002), the owners of Los Angeles' Canter's Delicatessen were stuck for two years, to the tune of $35,000 they never will be able to recoup, until the Ninth Circuit wrested the case away from U.S. Dist. Judge Manuel L. Real, who had hijacked the case from the U.S. Bankruptcy Court in Los Angeles.

Elizabeth and Alan Canter, the owners of Canter's Deli bought a house as an investment in 1991, and rented it out to their son, Gary Canter, who, from 1991 to 1999, lived there with his wife, comely Deborah M. Canter, aka D. Maristina Canter, until their separation. Gary Canter always paid rent to his parents on the house.

In the meantime, Deborah Canter got into some criminal trouble. Her criminal case was assigned to Judge Real. ***He put her on probation***, not to the United States Probation Dept., but rather ***to himself, personally***. The Ninth Circuit disposition omits fact from its opinion probably because this fact was not in the record of this case, but my curiosity in the opinion that led to a little district court docket research revealed this fact.

Deborah Canter stayed on in the Canter house. The Canters filed an unlawful detainer action against her in state court, but the proceedings were stayed twenty-four minutes before the unlawful detainer trial was to have begun, when Deborah Canter filed a Chapter 13 bankruptcy proceeding.

Three months later, on January 26, 2000, the bankruptcy court lifted the stay and allowed the Canter parents to pursue their unlawful detainer action.

On February 7, 2000, Deborah signed a stipulated judgment providing that she would vacate the premises, and judgment was entered.

Judge Real, on February 17, 2000, withdrew the matter from bankruptcy court, and on February 29, 2000 Judge Real stayed enforcement of the state

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court unlawful detainer judgment, which required Deborah Canter to vacate the premises. She remained on personal probation to Judge Real.

Twice the Canter parents asked Judge Real to lift the stay, and twice Judge Real refused.

When the Canter parents asked Judge Real why the stay was reinstated, his response was "because I said it."

Under then-current federal law Judge Real's refusal to lift the stay was an unappealable interlocutory order. Then this court rendered its disposition.

In *In re Canter*, the Ninth Circuit re-stated the old rule of *Bauman v. United States*, 557 F.2d 650, 654-55 (9th Cir. 1997), that five conditions governed eligibility for mandamus: (1) no other adequate means of relief, such a direct appeal; (2) damage not correctable on appeal; (3) a clearly erroneous order; (4) an oft-repeated error or manifestation of a persistent disregard of federal rules; and (5) new and important problems, or issues of law of first impression. In a rarity, the Circuit found all five factors to be present.

Citing *In re Kemble*, 776 F.2d 802, 806 (9th Cir. 1985), the court restated that it does not "have jurisdiction over interlocutory appeals from orders withdrawing reference of cases to the bankruptcy court." Thus, no direct appeal was available.

The court found the Canters would be damaged and prejudiced in a way not correctable on appeal, citing *DeGeorge v. U.S. Dist. Ct.*, 219 F.3d 930, 934 (9th Cir. 2000). It held the Canters "sit in limbo . . . [and] Deborah [bankrupt and on probation to Judge Real] continues to reside in the property . . . without any rental payments . . . . "

The court held that "[t]he district court's [action] was an inefficient allocation of judicial resources, . . . [r]ather than enhancing efficiency, the district court's action created inefficiency, engendering a series of nonproductive motions and hearings[,] negatively impacted bankruptcy administration by needlessly disrupting the bankruptcy court's seamless processing of the case[,] [and] derailed the [bankruptcy] process provided by statute." Moreover, the court said that "[t]he district court's [action] also resulted in great delay and costs to Appellants[] . . . [and] encouraged forum shopping by essentially reversing the bankruptcy court's prior determinations."

The court found the final two *Bauman* factors met because Judge Real's action "manifests a persistent disregard of the federal court rules," and because the case raised an issue of first impression. The court commented on the phenomenon: "In fact, this case presents the rare circumstance where all the *Bauman* factors favor granting the writ of mandamus[,]" which is what was done.

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Rather than send the case back to Judge Real, perhaps in light of its knowledge of *Brown v. Baden*, 796 F.2d 1165 (9th Cir. 1986), *cert. denied*, 484 U.S. 963 (1987), a case remanded by the Ninth Circuit to Judge Real in which he simply refused to turn over the files to a new judge, the court itself remanded the case directly to the bankruptcy court.

It would appear to a reasonable observer who knew all these facts that something inappropriate happened here, beyond what the court discussed. What I mean to say is that it appears that Judge Real acted inappropriately to benefit an attractive female whom he oddly had placed on probation to himself, and, if this occurred, then it would constitute extreme judicial misconduct.

It is requested that this matter be appropriately investigated to determine, among other things, the actual relationship between Deborah Canter and Judge Real.

Thank you.

Very truly yours,

STEPHEN YAGMAN

c: Hon. Alex Kozinski

EXHIBIT C

JUDICIAL COUNCIL

FOR THE NINTH CIRCUIT

In re Charge of

Judicial Misconduct

No. 03-89037
ORDER AND
MEMORANDUM

Before: SCHROEDER, Chief Judge

A complaint of misconduct has been filed against a district judge of this circuit. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. §§ 351-364.

Complainant, an attorney, intimates that the judge acted for his own salacious interests by placing an "attractive female" criminal defendant on probation, "not to the United States Probation Depart., but rather **to himself, personally.**" (Emphasis in original.) He states that "a little district court docket research revealed this fact." Complainant adds that the judge's actions in withdrawing the underlying bankruptcy matter from the bankruptcy court and staying enforcement of the state

EXHIBIT C

unlawful detainer judgment further support the allegation of improper conduct. The Court of Appeals reviewed the judge's withdrawal of the matter from the bankruptcy court, determined that his actions were in error, and remanded the case to bankruptcy court. Complainant requests investigation into the relationship between the judge and the defendant, which was not discussed in the Court of Appeals opinion.

Upon inquiry the allegations of inappropriate conduct were not substantiated. Complainant failed to include any objectively verifiable proof (for example, names of witnesses, recorded documents, or transcripts) supporting his allegations of misconduct. Furthermore, complaints alleging misconduct occurring in open court should be supplied with the specific date of occurrence, the details of the hearing, and if possible, copies of transcripts. Conclusory charges that are unsupported, as here, will be dismissed. 28 U.S.C. § 352(b)(1)(A)(iii); Misconduct Rule 4(c)(3).

The judge's decisions pertaining to the bankruptcy case have already been reviewed by the Court of Appeals. A complaint will be dismissed if it is directly related to the merits of a judge's ruling or decision in the underlying case. 28 U.S.C. § 352(b)(1)(A)(ii); Misconduct Rule 4(c)(1). Charges relating to

those decisions are, therefore, also dismissed.

COMPLAINT DISMISSED.

Mary McClure

Chief Judge

EXHIBIT D

DECLARATION OF DEBORAH M. CANTER

I, DEBORAH M. CANTER, declare as follows:

1. I have personal knowledge of the facts set forth in this declaration and, if called upon to testify, I could and would competently testify thereto.

2. I was formerly represented by Andrew Smyth, Esq., in connection with bankruptcy proceedings. At one point in the proceedings I received a call at home from Mr. Smyth's wife and legal secretary, Michelle. She asked me to come in to the office to sign a declaration about an eviction action pending against me. I did so, and at Michelle's request I gave her $50 for an attorney's messenger service to deliver the declaration to the court. Michelle did not specify the addressee, and I do not have a copy of the declaration.

3. Approximately one week later, while I was at home, my mother told me that Mr. Smyth's office was on the phone. Mr. Smyth said that an eviction stay order had been issued.

4. I have never written or delivered a letter or any other document to District Judge Manual Real or to anyone in his chambers.

5. I have never met with, seen, or had any conversation with Judge Real outside the presence of counsel or a probation officer.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

DATED: September 1, 2004

Deborah M. Canter

DEBORAH M. CANTER

EXHIBIT D

EXHIBIT E

DECLARATION OF RANDALL LIMBACH

I, RANDALL LIMBACH, declare as follows:

1. I am a United States Probation Officer and have been so employed since 1998. I have personal knowledge of the matters set forth in this declaration, and if called upon to testify, I would and could competently testify thereto.

2. On about April 15, 1999, the case of *United States v. Deborah Canter* was assigned to me, in my capacity as a Probation Officer. Ms. Canter had been sentenced upon her conviction of federal criminal violations to five years probation and 2,000 hours of community service by U.S. District Judge Manuel L. Real.

3. Even prior to Ms. Canter's case having been assigned to me, I was familiar with Judge Real's successful "120 Day Program" of periodically meeting with probationers to encourage their rehabilitation and participation in community service programs. In my opinion it is a valuable program that is helpful to probationers.

After Ms. Canter's case was assigned to me, and Judge Real placed her on probation, I assisted in coordinating meetings amongst Ms. Canter, Judge Real and me in Judge Real's Chambers.

4. Judge Real's meetings with probationers generally lasted approximately fifteen (15) minutes and the Probation Officer was present at the meetings. Ms. Canter's case was treated no differently.

5. On April 20, 1999, Ms. Canter and I had our first meeting, and I made arrangements for her to comply with her community service obligations as a volunteer with AIDS Project L.A.

6. On August 23, 1999, Ms. Canter and I met with Judge Real for her first 120-day meeting during which Judge Real explained the purpose and goals of the program to her. I was present for the entire meeting.

7. On January 24, 2000, Ms. Canter and I met with Judge Real for her second "120-Day" meeting. During the course of this meeting, Ms. Canter advised Judge Real that the confidential probation report from her criminal case had been used against her by counsel for her creditors in a bankruptcy case that she had filed in the District Court. I observed Ms. Canter provide Judge Real with a copy of the bankruptcy case cover sheet. Judge Real advise her to confer with her criminal attorney, Guy Iverson, concerning her complaint that confidential information from her criminal case had been improperly disclosed in the Bankruptcy proceeding.

At this meeting, Judge Real inquired of me if Ms. Canter had provided this same information to me and I informed Judge Real that she had. Judge Real stated that he would look into the possibility that improper use of confidential probation materials had been used in the bankruptcy case. I was present for the entire meeting on January 24, 2000.

8. I have reviewed my file in the *Canter* case and my notes show that on February 3, 2000, I met with Ms. Canter in connection with her probation status and she informed me that she had followed Judge Real's instruction to advise her attorney, Guy Iverson, of her bankruptcy case complaint.

9. On April 3, 2000, I once again met with Ms. Canter and she informed me that it was her understanding, based upon information she had received from Mr. Iverson, that Judge Real had assumed jurisdiction over her bankruptcy case.

10. I recall having been subsequently advised by Judge Real's staff that a previously scheduled 120-day meeting on April 24, 2000 would not take place in that Judge Real had taken jurisdiction over Ms. Canter's bankruptcy case and there was a need to avoid even a perception of a conflict.

11. In June of 2002, I was transferred to the Inglewood Division of the U.S. Probation Office and no longer have supervision of Ms. Canter's case.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

DATED: August 5, 2004

RANDALL LIMBACH

EXHIBIT F

DECLARATION OF LOYETTE LYNN FISHER

I, LOYETTE LYNN FISHER, declare as follows:

1. I have been employed either as a Courtroom Deputy Clerk or Administrative Assistant to Judge Manuel L. Real for the last twenty-four years. Part of my responsibilities as Judge Real's Administrative Assistant is to receive correspondence and mail delivered to Judge Real's Chambers and to appropriately file these documents.

2. I have personal knowledge of the facts set forth in this declaration, and, if called upon to testify, I could and would competently testify thereto.

3. In 1976, Judge Real instituted his "120 Day Program" for defendants who were sentenced to probation. The program was designed to help probationers become productive and law abiding citizens. The program is administered through the Probation Office. I receive a list of probationers that are scheduled for the 120 day program each month. The probation officer submits a report that details how the probationer is doing in their performance of community service, work, restitution and any problems with the probationer. I call the names of the probationers in the courtroom and escort them with their probation officer into Judge Real's chambers for the meeting. During the meeting Judge Real counsels the probationer with respect to problems they may have encountered, monitors the probationer's progress and lends encouragement to complete the program. More than four hundred probationers have successfully completed Judge Real's 120 Day Program. It is my belief that this program has been of great value to the probationers and to the community in general.

4. On or about December 22, 2003, I reviewed an order from the Judicial Council involving the case of *United States v. Deborah Canter*. I carefully reviewed the file concerning Ms. Canter, which I maintain as

EXHIBIT F