

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ALEX KOZINSKI
Chief Judge

June 12, 2008

I have asked the Judicial Council of the Ninth Circuit to take steps pursuant to Rule 26, of the Rules Governing Judicial Conduct and Disability, and to initiate proceedings concerning the article that appeared in yesterday's Los Angeles Times. I will cooperate fully in any investigation.

Alex Kozinski

JUN 16 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JUDICIAL COUNCIL
OF THE NINTH CIRCUIT

IN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 08-90035

ORDER

Before: **THOMPSON, THOMAS, GRABER, MCKEOWN** and **BERZON**,
Circuit Judges, and **GONZALEZ, HATTER, LASNIK, MOLLOY** and
STOTLER, District Judges.

Pursuant to 28 U.S.C. § 351(b) and Rule 5 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, in the interest of the effective and expeditious administration of the business of the courts and on the basis of information available, Chief Judge Alex Kozinski’s request to initiate proceedings dated June 12, 2008, is construed to be an identification of a complaint of judicial misconduct against Chief Judge Kozinski. This identified complaint is based on allegations in a June 11, 2008, *Los Angeles Times* article entitled “9th Circuit’s Chief Judge Posted Sexually Explicit Matter On His Website.”

Exceptional circumstances appearing, and pursuant to Rule 26 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the Ninth Circuit Judicial Council requests that the Chief Justice transfer this identified complaint to the judicial council of another circuit for review and disposition.

Any pending complaints, or new complaints that may be filed, relating to this matter are included in this request for transfer.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 16, 2008

The Honorable Anthony J. Scirica
Chief Judge
United States Court of Appeals
22614 James A. Byrne
United States Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Chief Judge Scirica:

On June 16, 2008, I received a request from the Judicial Council of the Ninth Circuit, under Rule 26 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, to transfer a judicial conduct proceeding captioned *In re Complaint of Judicial Misconduct*, No. 08-90035, to the judicial council of another federal judicial circuit. In response, I have selected the Judicial Council of the Third Circuit to accept the transfer and to exercise the powers of a judicial council with respect to the identified complaint and any pending or new complaints relating to the same subject matter.

Sincerely,



U.S. COURTS

THE FEDERAL JUDICIARY

[About U.S. Courts](#)[Newsroom](#)[Library](#)[Court Links](#)[FAQs](#)[Employment](#)[Contact Us](#)

Library

[Publications and Reports](#)[Periodicals](#)[Judicial Ethics and
Conduct](#)[Statistical Reports](#)[Forms](#)[Court Fees](#)[Return to Library](#)

The Chief Justice received today a request from the Judicial Council of the Ninth Circuit to transfer, pursuant to Rule 26 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, *In Re Complaint of Judicial Misconduct*, No. 08-90035, to the judicial council of another federal judicial circuit for review and disposition. Upon receipt, the Chief Justice transferred the matter to the Judicial Council of the Third Circuit. The chair of the Judicial Council of the Third Circuit, Chief Judge Anthony Scirica, appointed today a special committee to investigate the matter in accordance with 28 U.S.C. 353 and the associated rules. The members of the special committee are: Chief Judge Scirica, Third Circuit Court of Appeals Judges Marjorie Rendell and Walter Stapleton, and Chief District Judges Harvey Bartle III (E.D. Pa.) and Garrett Brown, Jr., (N.J.).

- [Order of the Ninth Circuit Judicial Council](#)
- [Rule 26 transfer letter](#)

[About The U.S. Courts](#) | [Newsroom](#) | [Library](#) | [Court Links](#) | [FAQs](#) | [Employment Opportunities](#) | [Contact Us](#) | [Search](#)

This page is maintained by the Administrative Office of the U.S. Courts on behalf of the U.S. Courts.

The purpose of this site is to function as a clearinghouse for information from and about the Judicial Branch of the U.S. Government.

[Privacy and Security Notices](#)



"I know when I am reading BNA's
Medical Devices Law & Industry Report,
I am getting the full story."

Michael Gaba
Holland & Knight LLP
Washington, DC



HOME CLE DISCIPLINE JOBS ADVERTISE REPRINTS SUBSCRIPTIONS ABOUT US CONTACT US RESOURCE CENTER



FEATURES JUST BEING KOZINSKI

The Ninth Circuit's new chief judge is brilliant, charming - and provocative. But does he have the right temperament for the job?

By John Roemer

Relaxed, expansive, and thoroughly at ease before a BBC television interviewer, Judge Alex Kozinski is holding forth at the San Francisco courthouse of the Ninth U.S. Circuit Court of Appeals. Just weeks before taking the gavel last November as the circuit's chief judge, Kozinski is sitting in Courtroom One of the extravagant Florentine-style palazzo. There's a mahogany and marble judge's bench in the background. Bare-breasted caryatids uphold askylighted ceiling. Enormous, intricate mosaics line the wall.

Kozinski, however, isn't discussing recent case law or jurisprudential trends. Nope, he's talking movies. Kozinski is an expert on Hollywood films; he is also an expert on the cowboy novels of 19th-century author Karl May, as well as on building home computers. Filmwise, Kozinski is especially fond of courtroom dramas, which he described at length last year while attending a judicial conference in London. The BBC got wind of that and sent a crew to profile this maverick American jurist.



Judge Alex Kozinski

Photo by Vern Evans

Kozinski tells the interviewer about arriving in America in 1962 at age twelve with his parents from Romania, and says he spent the next two years watching television. When he saw *12 Angry Men*, Kozinski recalls, it set him on his life course. "God, so that's what law is all about," he remembers thinking. "That movie carried me through law school."

But he's just getting started. He tells the interviewer that Paul Newman, in *The Verdict*, demonstrates how juries can deconstruct evidence that only seems ironclad. Spencer Tracy was so convincing in *Inherit the Wind* that Kozinski says he keeps a photo of the actual Scopes trial in his chambers. Also on his wall: a mock *Easy Rider* poster showing Kozinski on a motorcycle next to Peter Fonda and Jack Nicholson.

Once the BBC interview concludes, Kozinski's mood turns sour. "This courthouse is not to my taste," he says as we stride through its marble corridors. "It's a little garish. Look at these portraits," he says, arms sweeping wildly as he gestures at the judicial photos lining one hallway. "Live judges on this side; dead judges over there." He loosens the tie on his too-tight shirt collar, his neck bulging as if clothes cannot entirely contain the corporeal Kozinski. "And have you seen the swastika courtroom?"

Kozinski is referring to the art moderne chamber on the second floor with black-and-white ceiling decorations that vaguely resemble the Nazi emblem. Kozinski, whose parents were Holocaust survivors, says he finds the symbols dispiriting. "It's from an era when they had more money than taste," he complains of the decor.

The Ninth Circuit hasn't been the same since Kozinski arrived in 1985. Then just 35, he was the youngest jurist on the federal appellate bench since the appointment of William Howard Taft in 1892. Kozinski quickly placed the conservative spirit of his patron, President Ronald Reagan, squarely at the center of a notoriously liberal bench. Ever since, he's written brilliant, transformative opinions and dissents, while gleefully shattering the court's staid, black-robed image.

This year, however, Kozinski faces a murkier career phase as he begins a seven-year term as chief judge. He assumed the position based on age (at 58, he can complete the term before mandatory retirement at 70), seniority, and not having served in the post previously. The Ninth Circuit's official press release on the accession included a line only he could have written: "Judge Kozinski also believes that looks count, though he can provide no support for that proposition."

The Ninth Circuit is the nation's largest appellate court, spanning nine western states, Guam, and the Northern Mariana Islands. It has 28 authorized judgeships and approximately 15,000 filings a year. As chief judge, Kozinski will serve as executive officer of both the Ninth Circuit and the Judicial Council of the Ninth Circuit, the governing body for federal courts in the west. Kozinski also will represent the Ninth Circuit at biannual meetings of the Judicial Conference of the United States, the judiciary's national policymaking body in Washington, D.C.

Judge Mary M. Schroeder, Kozinski's Democratic predecessor as chief judge, faced the daunting task of blunting Republican efforts to divide the Ninth Circuit in two. She succeeded in blocking repeated congressional attempts to split off California, Nevada, and Arizona from the other members. Politics counts in such situations, and in 2003 Kozinski testified alongside Schroeder defending the current boundaries.

"Kozinski started as a lone conservative/libertarian, holding back the waves of activist liberalism on the court," says Stephen R. Barnett, a retired professor at the UC Berkeley School of Law and a longtime Kozinski fan. "Now he has gained so much influence that-even before he became chief judge-his position is a central one."

Asked about his new duties, Kozinski admits the transition will be hard. "There's so much administrative drudgery that you have less time for judging," he says. "I prefer being one of the guys." But in the end, Kozinski says, he concluded it would be cowardly to duck the position-though few believe he would ever pass up such an opportunity.

Kozinski's first test as chief judge is likely to be a battle with the Judicial Conference over centralization of judicial discipline. In 1979 Chief Judge James R. Browning of the Ninth Circuit successfully lobbied against congressional efforts to set up a National Court of Judicial Conduct. Instead, Congress passed the Judicial Conduct and Disability Act of 1980, which left discipline to the individual circuits. But the old controversy was reborn when the U.S. Supreme Court last year issued a critical review of judicial discipline cases, prompting the Judicial Conference to draft revised rules for the circuits. The proposed new rules explicitly authorize the Judicial Conference to review circuit decisions in discipline cases.

"This strong move toward reducing the autonomy of the circuits in matters of judicial discipline will preoccupy Kozinski from time to time, and I think it will be very important to him," says Arthur Hellman, a professor at the University of Pittsburgh School of Law and an authority on the Ninth Circuit. "The Ninth Circuit has always taken pride in doing things its own way, and it won't look at all kindly on these efforts to impose national uniformity."

Kozinski responds, "Obviously we depend on Washington for funding and other support, but you can be sure I will continue to be jealous of anything I see as a usurpation of the autonomy of local circuits, or the independence of our federal judges."

At the Ninth Circuit's gavel-passing ceremony in November, Senior Judge J. Clifford Wallace, a Nixon appointee, invoked the advice of venerable U.S. Supreme Court Chief Justice Charles Evans Hughes Sr. that the circuits maintain their autonomy in the face of threats to centralize judicial misconduct investigations. "Some feel the fumes from the Potomac overwhelm the sane," Wallace said.

Kozinski followed Wallace to the podium and said, "Judge Wallace almost just talked me out of taking this job." He was

Search **GO**

Advanced Search

- April

CONTENTS

EDITOR'S LETTER
FULL DISCLOSURE
LEGAL EASE
MCLE

FEATURES
Just Being Kozinski

No Regrets?
Going the Distance

EXPERT ADVICE

ESQ.

TECHNICALITIES

BOOK REVIEWS

IN PRO PER

CALIFORNIA 50

CLAY AWARDS

ANGEL AWARDS

MALPRACTICE
INSURANCE REPORT

OUR OTHER WEBSITES

- Daily Journal
- CA Real Estate Journal

Helping you
achieve
excellence
in the business
and the practice
of law

Orrick has happier
clients and higher
revenues.

Doug Benson,
Orrick's COO,
credits ADERANT.

www.aderant.com

Exceptional
legal publications
and programs
for California
lawyers.

UNIVERSITY OF CALIFORNIA
STATE BAR OF CALIFORNIA

of course. But the real question-given his history of independent behavior and public spats with lawyers, judges, and court administrators-is whether Kozinski has the temperament to be an effective administrator.

There can be no doubt about the chief judge's brilliance. Kozinski's gold-plated resume includes degrees in economics and law from UCLA, where he graduated number one in his law school class. He clerked for Judge Anthony Kennedy on the Ninth Circuit, and then for Chief Justice Warren E. Burger on the U.S. Supreme Court. After a brief stint at Covington & Burling in Washington, D.C., he won a spot on President Reagan's White House legal staff before taking a position as special counsel to the Merit Systems Protection Board. He served for three years as chief judge of the U.S. Court of Federal Claims before Reagan appointed him to the Ninth Circuit.

Kozinski used poker games, card tricks, and chess matches to charm his law clerk recruits. He even took them paint-balling and snowboarding, played Nintendo, and wrote video-game reviews. He also performed intellectual acrobatics in his written opinions, sticking up for gay rights (*International Olympic Comm. v. San Francisco Arts & Athletics*, 789 F.2d 1319 (9th Cir. 1986)), contradicting legal icon Roger Traynor on contract law (*Trident Cir. v. Connecticut Gen. Life Ins. Co.*, 847 F.2d 564 (9th Cir. 1988)), and wrestling with the vexing issue of how the courts assess scientific evidence (*Daubert v. Merrell Dow Pharm., Inc.*, 951 F.2d 1128 (9th Cir. 1991), *vacated*, 509 US 779 (1993)).

In 1990 Kozinski scored a triple play, fusing his love of movies, writing appellate opinions, and self-display. In a masterpiece of double entendre, he salted 204 film titles throughout an antitrust decision absolving a Las Vegas theater owner of trying to control the market. The opinion even omitted the period after one lawyer's middle initial so that "M" would connote Fritz Lang's dark 1931 classic. (*U.S. v. Syfy Enter.*, 903 F.2d 659 (9th Cir. 1990).)

The decision also showcased Kozinski's disdain for economic regulation, at one point combining his movie title puns with a nod to novelist Ayn Rand, the high priestess of individualism. "Personal initiative," Kozinski wrote, "not government control, is the fountainhead of progress in a capitalist economy." Enchanted by Kozinski's playfulness, the *Wall Street Journal* headlined its coverage of the case with, "Verdict: Frantic Antitrust Ideas Are Gone With the Wind."

For Kozinski, showmanship comes naturally. "For better or worse, we are the Court of Appeals for the Hollywood Circuit," he wrote in one of his provocative dissents. He was deploring the majority's decision that Vanna White was wronged by an advertisement spoofing her likeness. He cited the Mel Brooks film *Spaceballs*, a poster showing a pregnant Girl Scout, and an ad featuring Morton Downey Jr. to illustrate the parody exception to the right of publicity. Kozinski added in parentheses that he had never previously heard of Downey, although "I'm told he's sort of like Rush Limbaugh, but not as shy." (*White v. Samsung Elec. Am. Inc.*, 989 F.2d 1512, 1514 & n. 12 (9th Cir. 1993) (Kozinski, J., dissenting).)

Dazzling, contrarian opinions seemed to roll out of Kozinski's chambers in Pasadena. But along the way, he developed a penchant for getting entangled in personal disputes, which is unusual for a federal judge. In 1997, for instance, he initiated an epic feud with lawyer and writer Edward Lazarus following publication of *Closed Chambers*, Lazarus's book about a year clerking for U.S. Supreme Court Justice Harry Blackmun. Kozinski publicly attacked Lazarus's reporting for what he considered violations of the court's ethics rules-not to mention Lazarus's uncharitable view of Justice Kennedy, an old friend of Kozinski's. When Erwin Chemerinsky, then a law professor at the University of Southern California, came to Lazarus's defense, it nearly cost him his friendship with Kozinski. All three have since made up.

In another example of his feistiness, Kozinski visited San Quentin State Prison in 2003 to chat with a convicted murderer and other death-row inmates-provoking then Attorney General Bill Lockyer to question the trip's propriety. Lockyer's office asked the Ninth Circuit to investigate, and to bar Kozinski in the interim from hearing any capital appeals. Incensed, Kozinski released Lockyer's letter to the press. After an internal investigation, Judge Schroeder concluded that Kozinski had done nothing wrong.

Kozinski's brush with the judicial-discipline system spilled over into a parallel ethics investigation of district Judge Manuel L. Real of Los Angeles. In 1999, Real-now 83-had aided a struggling young divorcee who appeared before him as part of a larger bankruptcy case. Real took the unusual step of withdrawing the case from bankruptcy court. He then barred the state from evicting the woman from her home. A circuit panel concluded the judge had abused his discretion.

Then in 2003 Stephen Yagman, a Los Angeles civil rights lawyer and longtime Real adversary, filed judicial-misconduct charges, asserting that Real had "acted inappropriately to benefit an attractive female." Judge Schroeder twice dismissed the complaint. On a third try, the circuit's discipline committee backed her up, this time over a flaming 39-page dissent by Kozinski. (*In re Compl. of Judicial Misconduct*, 425 F.3d 1179 (9th Cir. 2005).)

Having been exonerated himself, Kozinski now worried that if the court did not act appropriately when judges overstep, Congress or the court's bureaucracy would take matters out of its hands. "Our first duty as members of the Judicial Council is not to spare the feelings of judges accused of misconduct," Kozinski wrote. "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."

Those words may come back to haunt the court. Following a U.S. Supreme Court review of misconduct cases from 2002 to 2005, Justice Stephen Breyer reported last year that the Real case was one of five botched high-profile inquiries. The Judicial Conference then created a committee chaired by Second Circuit Judge Ralph K. Winter to draft revised rules. In January, the conference issued a public reprimand of Real and remanded the case to the Ninth Circuit for further action on a separate charge.

As chief judge, Kozinski will lead that fact-finding investigation while fighting off newer allegations of his own misbehavior. In 2005, Kozinski engaged in a battle of public broadsides with Cyrus Sanai, a Beverly Hills lawyer. Sanai had written an op-ed piece in a San Franciscobased legal newspaper under the headline, "Taking the Kozinski Challenge." Ostensibly, the article was about an obscure rule called the Rooker-Feldman doctrine that prevents federal courts from intervening in state court civil disputes. Sanai claimed that the Ninth Circuit has taken at least three different positions on Rooker-Feldman in published opinions. These "somersaults," Sanai wrote, contradicted Kozinski's claim that the circuit scrupulously follows precedent set by the first panel to decide a particular issue.

Kozinski took the bait. A week later, he wrote an article published by the same newspaper asserting that Sanai was all wet legally and had failed to demonstrate his thesis. Then Kozinski went further, disclosing-as his opponent had not-that Sanai had a personal interest in the Rooker-Feldman issue because he had sought to get federal judges to intervene in a Washington state divorce case involving Sanai's parents. Kozinski quoted a federal judge who called the efforts "an indescribable abuse of the legal process." Kozinski concluded by contending that Sanai "and certain members of his family have hounded a state trial judge off their case; been held in contempt and sanctioned ... and had their *ninth* sortie to our court in the same case designated as 'frivolous' and 'an improper dilatory tactic' by the district court. A detached observer, Mr. Sanai is not."

Sanai responded to the article by filing a judicial-misconduct claim, protesting that Kozinski's piece was "a direct and intentional comment on the merits of [my] pending petition for rehearing and rehearing en banc by the Ninth Circuit" that violated the code of judicial conduct.

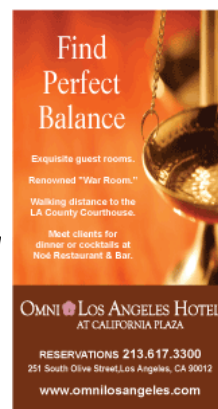
Last year Judge Schroeder dismissed the complaint in an order hidden from public view that did not mention Kozinski by name. "Notwithstanding that no specific harm was done to complainant," she wrote, "the judge acknowledged that his action was perceived by complainant as harmful, apologized for it, and, more importantly, pledged to refrain from such conduct in the future." (*In re Charge of Judicial Misconduct*, 05-89098 slip op. at 4 (9th Cir. Dec. 19, 2006).) Sanai has renewed his complaint, denying that Kozinski apologized and citing evidence that he claims shows Kozinski continues to comment on his case on the Internet.

In another long-running dispute, Kozinski butted heads with court administrators at the Ninth Circuit and the Judicial Conference who had placed Internet filters on judicial computers in an effort, they said, to stop pornography downloads and Napster-style music file sharing. Those practices, the administrators complained following an investigation, accounted for an enormous increase in bandwidth used by courts nationwide.

Kozinski responded to the administrators publicly. In op-ed articles published by the *Wall Street Journal*, the *New York Times* and the *Los Angeles Times*, he called out the bureaucrats by name and blasted what he termed their intrusion on judicial privacy. Then in 2001, he entered a computer room in San Francisco where Internet communications were funneled to the Eighth, Ninth, and Tenth circuits and personally disabled the filters. Called to task by outraged court administrators, Kozinski survived a close censure vote by the Judicial Conference.

That episode seemed forgotten until last fall, when Leonidas Ralph Mecham-the chief administrator in Washington, D.C., who had championed use of the Internet filters-wrote a 16-page letter to the Judicial Conference's special committee on revising the discipline rules. Mecham, who headed the Administrative Office of the Federal Courts for 21 years before his retirement, called for reopening the conference's case against Kozinski, who Mecham contended committed a federal felony.

Kozinski, at least for publication, tends to shrug off these matters. Mecham, he says, is "meshuganah"-Yiddish for crazy or foolish. But other Ninth Circuit judges have let it be known they're concerned that Kozinski might lose a protracted war with the Judicial Conference, potentially opening up disciplinary complaints to less-sympathetic officials in Washington. "I hope he



Find Perfect Balance

Exquisite guest rooms.
Renowned "War Room."
Walking distance to the LA County Courthouse.
Meet clients for dinner or cocktails at Rod Restaurant & Bar.

OMNI LOS ANGELES HOTEL
AT CALIFORNIA PLAZA

RESERVATIONS 213.617.3300
251 South Olive Street, Los Angeles, CA 90012
www.omnilosangeles.com

can persuade them, not antagonize them," said one concerned judge. "With Alex, you never know."

Kozinski, however, is nobody's fool. In January he announced that all orders resolving complaints against judges would now be posted on the Ninth Circuit's website, a reform long sought by advocates of increased transparency. He said the move was unrelated to the Judicial Conference's rules-revision project, citing as precedent a decision by Frank H. Easterbrook, chief judge of the Seventh Circuit in Chicago, to begin posting orders after he took office in 2006. Except in egregious cases, however, the new postings will conceal the name of the accused judge.

Hellman of the University of Pittsburgh doubts that the Sanai or Mecham matters will cause Kozinski any harm. "These controversies are so little-known that they probably won't have much influence on his ability to impose judicial discipline as necessary," Hellman says. "The more significant thing-assuming that new discipline rules go into effect-is that he'll be the first chief judge of the Ninth Circuit to carry out his responsibilities with the knowledge that someone in Washington is looking over his shoulder. That leaves Kozinski subject to the possibility of continual second-guessing."

A final concern about Kozinski is that he may use his new powers too well. For instance, observers note that as chief judge Kozinski will automatically be included on every en banc court. Other judges on the eleven-member panels are drawn at random.

Stephen L. Wasby, an emeritus professor of political science at the State University of New York, Albany, who closely follows the Ninth Circuit, contends that Kozinski's previous dissents in en banc review appeals were often signals to the U.S. Supreme Court that a case has merit. "Some believe they are, in effect, judge-written petitions for certiorari," Wasby says. "They've called this kind of dissent a 'Kozinski cert petition.' I fear that the chief judge job won't housebreak him of that."

Adds Professor Barnett, "It will be interesting to see if Kozinski uses his new power to move the court away from the three-judge-panel model toward an increased en banc practice. Will he be revolutionary, or just another chief judge?"

Recent en banc review activity suggests that other Ninth Circuit judges are aware of a changed dynamic. In January, for example, the court decided five times to review panel decisions-an unusually high number of en banc grants of review. Surprisingly, four of the cases up for review and possible reversal were conservative rulings, demonstrating that Kozinski's political sway may not be as great as he'd like.

Indeed, the court's first grant of en banc review for the year, on January 7, was in a case in which Kozinski himself had written a panel opinion that made it harder for disabled tenants to sue over the design and construction of allegedly inaccessible homes. (*Garcia v. Brockway*, 503 F.3d 1092 (9th Cir. 2007).) The en banc grants may be a signal from the court's liberals, letting Kozinski know they're still around.

"It could well be that the Indians are testing the chief," says Douglas W. Kmiec, a conservative legal scholar at Pepperdine University School of Law in Malibu. "Judge Kozinski is an eclectic thinker who has made good friendships across the ideological spectrum of the circuit. That works well when you are one of the tribe. It works less well when you step in front and become responsible for administration and leadership."

Nevertheless, it's nice to know that the chief judge still has time for fun. At a recent intellectual property symposium at the Santa Clara University School of Law, Kozinski promised to deliver a keynote address, curiously titled "The Dead Past." As he waits his turn to appear, he listens briefly to a speaker discussing the problem of policing user-generated content on YouTube. "Too deep for me," he mutters to me, and heads for the lobby. "Never mind all that-what about our pay raises?" he wants to know. A judicial-salary increase was then being debated by Congress, and Kozinski was eager for news of its fate.

"The money would be nice," he says of the impending raises. "But once that bill is dealt with, we'll be free to go ahead with other things. The courthouse in Honolulu flooded the other day. It's not glamorous, but that's what my time is filled with now."

When the time comes for his address, Kozinski reveals that "The Dead Past" is a 1956 Isaac Asimov short story about a chronoscope that lets users view each other's lives. "Every man his own Peeping Tom," Kozinski says, applying the lesson to the vast trove of personal information available in cyberspace.

Kozinski deplors that development, telling the Santa Clara law students of his struggle with Mecham and the court bureaucrats over the Internet filters. In a way, he says, we have encouraged government intrusions by lowering our expectation of privacy. We post our intimate lives on the Web, we publicly shout confidences into cell phones, and we smile at photos from space that show close-ups of our homes. "Happily, I hadn't been taking one of my famous nude sunbaths on the patio" when the satellite passed over his backyard, Kozinski says. He concludes with the sardonic final words of Asimov's story-which could also sum up his new visibility as chief judge: "Happy goldfish bowl."

After his speech Kozinski refuses to engage in serious conversation. He greets a Romanian law student, chats with her in their native tongue, kisses her hand as they part. He leans back against a table, his short arms folded over a prosperous little tummy, schmoozing with a small crowd of admirers. "The truth is, I have no vision for the circuit, nor am I sure it's a good idea to have a vision," he says. "This is a court, not a nation or a state. Our mission is largely reactive: to serve those who appear before us. If we can do that well, quickly, and without commotion, we've done the best that can be done. My fondest hope is that, in the future, no one will look back on the Kozinski years and roll their eyes."

John Roemer covers the Ninth U.S. Circuit Court of Appeals for the San Francisco Daily Journal.



Copyright © 2008 Daily Journal Corporation. All rights reserved. [User Agreement](#)
915 E First Street, Los Angeles, CA 90012