

## PART I

### JUDICIAL MISCONDUCT COMPLAINT FILED AGAINST NINTH CIRCUIT COURT OF APPEALS CHIEF JUDGE ALEX KOZINSKI AND OTHER JUDGES COVERING 2001 TO 2008 UNDER "THE JUDICIAL MISCONDUCT AND DISABILITY ACT OF 1980"

I file this Judicial Misconduct complaint against Ninth Circuit Court of Appeals Chief Judge Alex Kozinski to carry out what I am sure would be the fervent wishes of the late Chief Justice of the United States, William H. Rehnquist for whom I had the honor to serve for 18 ½ years. I seek to vindicate his powerfully held judgment that Judge Kozinski had committed felonies against the Judicial Branch for which he should be "sternly disciplined." In my view, that "discipline" should be his impeachment or resignation as a Federal Judge. Chief Justice Rehnquist was outraged when Judge Kozinski, on May 24, 2001, illegally entered the secure site of the Judiciary's Internet Security Gateway in San Francisco and proceeded to sabotage and turn off all of the sensors which protected the confidential papers and records of every Judge in the Eighth, Ninth and Tenth Circuits without notifying any of them. He committed these Federal crimes solely to make it impossible to detect the downloading of illegal pornography and illegal music by Federal Judges and Court staff, a practice which had increased massively in the prior two years. In just one 28 day period, for example, a Ninth Circuit study found there were over 90,000 hits on 1100 pornographic sites. An Internet broad bandwidth study conducted soon after at three secure sites, including San Francisco, by agents of the Judicial Conference of the United States found that in just one year fully 50% of the increased use of the Judiciary's Internet bandwidth was to download pornography in the Federal Courts, on Court computers by Court officials and employees. Chief Justice Rehnquist was even more outraged when the Ninth Circuit Council headed by Chief Judge Mary Schroeder refused to carry out their legal duty to file a misconduct complaint against and discipline Kozinski as they were required to do under The Judicial Misconduct and Disability Act of 1980. Instead, Judge Schroeder and the Council along with Judge Kozinski launched a major campaign to cover up the Kozinski crimes. The Chief Justice and I swiftly learned why the Council was so totally irresponsible when we discovered that Judge Schroeder and all the other members of the Council had voted in advance to approve Kozinski's felonies and other crimes. Thus, they became criminal co-conspirators with Kozinski who obviously were not willing to investigate and discipline themselves.

At this point, Chief Justice Rehnquist directed his Judicial Conference Executive Committee to act immediately to salvage the reputation of the Judiciary. He told them to develop a plan to "sternly discipline" Kozinski, Schroeder and the Council leading to cutting off all computer and Internet funds for the Ninth Circuit court, and taking away their contracting authority. Depending upon their recommendations, he said an emergency meeting of the full Judicial Conference might be required to take action. For the first time in history, the Executive Committee deliberately and knowingly defied a

Chief Justice and without even calling him before acting as he insisted the Chairman must do. Instead, they "capitulated" to Kozinski, Schroeder and the Ninth Circuit Council or as Kozinski said, "they surrendered." The system broke down entirely! The Circuit Council which is responsible for Judge's discipline instead became criminal co-conspirators with Kozinski. The Executive Committee majority disloyally and unwisely undermined the good name and integrity of the Judicial Branch. They turned their backs on the Chief Justice and, in effect, became parties to the criminal cover up for Kozinski!

Chief Justice Rehnquist on June 20, 2001, sharply rebuked the Executive Committee members for their total failure to protect the reputation of the judiciary and so informed the entire Judicial Conference and its 22 committee Chairmen of their irresponsibility and for improperly usurping the authority of the full Conference. He then ordered me to remove the Internet Security Gateway not only from San Francisco but entirely from the Ninth Circuit so Kozinski, Schroeder and others could not illegally sabotage it once again. He also directed me to remove the special added staff that I had provided in San Francisco to run the Gateway for the AO and the Conference. Thereafter, he appointed the "Breyer Committee" chaired by his Supreme Court colleague, Justice Steven Breyer, to study the performance and failures of Circuit Councils, (including the Ninth Circuit) in disciplining Judges for judicial misconduct under the 1980 Act. The Committee proposed a comprehensive reform which was adopted by the Conference.

The conduct of both the Ninth Circuit leaders and the Executive Committee was by far the most irresponsible action by Judges I witnessed during my 21 ½ years of service as Director of the Administrative Office of the U.S. Courts. (AO) Thereafter, Chief Justice Rehnquist and I held a post-mortem discussion. He turned to me and said of Judge Alex Kozinski; "Alex was always unstable! Inevitably he will overreact and then we can hit him." As was often the case, the Chief Justice was prophetic! He would not have been surprised therefore to have read in the LA Times for June 12, 2008, the revelation that Judge Alex Kozinski has displayed on his publicly accessible website an "extensive collection" of "pornographic materials" mostly degrading to women. Even Kozinski admitted that some of the material was "degrading and just gross" and that "it was his fault" that it was on a publicly accessible website.

As Chief Justice Rehnquist said, the "always unstable" Kozinski "would overreact and then we can hit him." Therefore, I am sure that he would urge the Third Circuit Council to get busy and act firmly after careful deliberation. Moreover, the Council has an opportunity to atone for the sins of the Ninth Circuit Council and the failures of the Conference Executive Committee by upholding the integrity of the Judicial Branch and vindicating a great Chief Justice who felt that no Judge should be able to get away with multiple felonies, other crimes, and violations of the Judicial Code of Ethics. Instead of showing contrition for his crimes, Kozinski not only publicly admitted guilt but then bragged about his felonies to the New York Times, The Wall Street Journal, Newsweek and to local California publications and other media people who would listen to him.

Chief Justice Rehnquist would say it is high time for justice to be at last meted out to Judge Kozinski. I believe he should be impeached or permitted to resign as a Judge.

**JUDICIAL MISCONDUCT COMPLAINT OF JUNE 16, 2008 AGAINST CHIEF JUDGE ALEX KOZINSKI OF THE NINTH CIRCUIT COURT OF APPEALS**

On June 12, 2008, the LA Times revealed that Chief Judge Alex Kozinski displayed an extensive collection of his pornographic materials on a publicly accessible website, most of it degrading to women. (See Exhibit 1) The Times charged that "sexually explicit material on Kozinski's site ... was extensive" and then went on to describe its vulgarity in graphic terms. Kozinski admitted that some of the material was "degrading and just gross" and that it was "his fault" that it was on a publicly accessible site. (See Exhibit 1) It was so vulgar that Judge Kozinski's good friend Stephen Gillers, a New York University law professor who specializes in legal ethics, said that the disclosures on his website would be "humiliating for Kozinski" and more importantly "would harm his reputation in many quarters." Of course, it also reflects discredit to the entire Judicial Branch of government since Kozinski is not only a Federal Judge but a Chief Judge and thus serves as a member of the Judicial Conference of the United States, the Judiciary's National Policy making organization. Gillers went on to say that if the public concludes that the Kozinski website was intended for the sharing of pornographic material, "that is a transgression of another order." Since Kozinski said according to the LA Times, "that he shared some material on his website with friends" and that the pornography on his site was accessible to the public, he obviously made it available to others which as Gillers said "is a transgression of another order. It would be hard for him to come back from that." Even Kozinski acknowledged that some of the material was "degrading and just gross" and that "it was his fault" that it was on his publicly accessible website.

Kozinski's pornographic website content was featured in newspapers throughout the country and over national network and cable television, all reflecting discredit both on the Federal Judiciary and upon himself. According to Cal Law in its Recorder for June 12, 2008, Professor Ronald Rotunda, a legal ethics scholar at George Mason University School of Law stated that "images posted on Kozinski's website raise questions about his judgment." Rotunda said "I don't think they should be posted anyplace, as they were described to me; it is not what I would recommend for a Judge."

To make matters even worse, Judge Kozinski as Chief Judge of the Ninth Circuit Court of Appeals displaced Federal District Judge George H. King of the Central District of California in order to take over a major pornography case involving Los Angeles businessman, Ira Isaacs, who was facing four counts of distributing obscene materials via sales of sexually graphic DVD's. Based on his pattern of conduct over the years, we can only hope that this unusual action by Kozinski was not taken to satisfy his long standing interest in pornography. According to Cal Law the jurors in the case are "expected to watch hours of raunchy video's during the trial." Isaacs would have had a perfect defense by arguing that he has done nothing worse than Judge Kozinski particularly when

the jury also learned of Kozinski's felonies in 2001 committed solely to permit Judges and staff to illegally download pornography in their Courts without being detected.

To repeat what Chief Justice Rehnquist said on June 13, 2001, speaking of Judge Kozinski: "Alex was always unstable. Inevitably he will overreact and then we can hit him." According to the LA Times article in June 2008, and in other publications at that same time, Kozinski has once again "overreacted" through maintaining his own personal pornographic website accessible to the public. This offense may be less serious than the Internet Security felonies he committed in 2001 but it does demonstrate a long term continuing pattern of conduct which can only continue to bring embarrassment to the Federal Judicial Branch of government and undermine it with Congress. His pattern of behavior is so pronounced that the Council should review the large body of scientific research and literature published particularly by psychiatrists and psychologists who have identified "pornographic addiction" as a major problem in the United States and throughout the world.

Kozinski committed at least two major errors of judgment; first he maintained a pornographic website available to the public; and second, at the same time he displaced another Judge to take over a Federal District Court case involving pornography to which Kozinski has been devoted for many years. Kozinski had to know that an attack would be made on his objectivity if his publicly accessible website were to be discovered and his criminal sabotage of 2001 be revealed. Given the wave of national publicity about the "gross" and "vulgar" pictures posted on his personal website, Judge Kozinski knew full well that complaints would be filed against him for judicial misconduct. Therefore, apparently he decided to try to make a virtue out of necessity and adopt the ploy of filing a complaint against himself to divert attention at least temporarily from his "gross" conduct.

Normally a misconduct complaint against a judge would be handled by the local Circuit Council, in this case the Ninth Circuit. Obviously, however, since it involved the Chief Judge of the Circuit who presides over the Council who is well known to the entire Council, this would have created a serious conflict of interest for them. Moreover, several members on the current Council would be disqualified outright since they also served in 2001 when Chief Judge Mary Schroeder and all the other Circuit Council members who were not only aware of Judge Kozinski's criminal actions, but approved them in advance making them criminal co-conspirators, covered them up, and then forfeited their responsibilities by failing to discipline Kozinski.

#### **JUDGE KOZINSKI: THE LEADING PROTECTOR OF PORNOGRAPHY IN THE FEDERAL COURTS**

Since at least April 23, 1998, Judge Kozinski has been the leading protector of downloading illegal pornography and copyrighted music on Federal Court computers, in Federal Court buildings, by Federal Judges and Court employees. He fought every effort to detect such illegal conduct and waste of taxpayer money. Kozinski carried his pro-pornography crusade to such an extreme that on May 24, 2001, he illegally entered the

vital Internet Security Gateway facility in San Francisco owned and controlled by the Administrative Office of the United States Courts (AO) under the direction of the Judicial Conference of the United States and its Committee on Automation and Technology. (CAT) He seized control of the Gateway which protected the security of all the Courts in the Ninth, Eighth, and Tenth Circuits. Kozinski then sabotaged the Gateway thus permitting thousands of hackers from all over the world to gain access to confidential records of Federal Judges and Courts. It is known that the records in at least 46 Courts were accessed and possibly compromised. An expert at the National Security Agency (NSA) described the Kozinski sabotage as "insane." Through his irresponsible actions, Kozinski committed at least two Federal felonies, several misdemeanors, and violated the Judicial Code of Ethics. (See Exhibit 6) Neither he nor the leaders of the Ninth Circuit Court of Appeals gave notice to the Judges in the Eighth, Ninth, and Tenth Circuits that the Gateway would be shut down for ten days stripping them of their Internet Security.

Nothing whatever was done to discipline Kozinski as was required under The Judicial Conduct and Disability Act of 1980. The reason is simple: Chief Judge Mary Schroeder and the entire Ninth Circuit Council all voted in advance to approve Kozinski's felonies and his other crimes thus likely making all of them criminal co-conspirators with Kozinski. (See Exhibit 2) Reportedly, Circuit Judge Sidney Thomas and certainly Circuit Executive Greg Walters actually accompanied Kozinski to sabotage the security system, becoming his criminal accomplices. Instead of disciplining Kozinski, Judge Schroeder, the Council joined to cover up his crimes. Sadly for the reputation of the entire Judicial Branch, they were successful. A majority of the Executive Committee of the Judicial Conference, as described by Chief Justice William H. Rehnquist "capitulated" to Kozinski, Schroeder and the Circuit Council. In response, the Chief Justice rebuked the Executive Committee on June 20, 2001, for usurping the authority of the Judicial Conference by unilaterally taking no action to discipline Kozinski but instead ratified the Circuit Council cover up of his crimes. (AO Director James Duff ordered his staff not to provide the letter to me.)

Thanks to Kozinski, Schroeder, Thomas, the Ninth Circuit Council and Circuit Executive Greg Walters, hackers had an unobstructed field-day from May 24, to June 2, 2001, to invade confidential Court records nationwide. They held the Security Gateway hostage for ten days and only agreed to turn it back on if the two sensors which detected Court downloading of pornography and illegal music were left off permanently. In the words of Kozinski, the executive Committee "not only capitulated, it surrendered" to Kozinski and Schroeder. 178 of the 180 sensors were reactivated on June 2, 2001 but not those two which detected illegal pornography and copyrighted music.

Thus, Kozinski, Schroeder and the Circuit Council made it all too clear that their sole objective in endangering Judicial Security by criminal sabotage was to assure that Federal Judges and Court employees could continue to download pornography and illegal music in the Federal Courts without being detected. Because of their efforts and the Executive Committee's failures, it is highly probable that such illegal downloading is still going on today in the 60% of all Federal Courts which have no suitable local detection systems. A leading example is the Ninth Circuit Court of Appeals which reportedly has

no such system at all apparently including, for example, the Chambers of Judges Kozinski, Schroeder and Thomas. (AO Director James Duff ordered his staff not to provide a current Audit Report)

**KOSINSKI'S ATTORNEY AND JUDGE SIDNEY THOMAS INDICT FORMER  
CHIEF JUDGE SCHROEDER AND THE ENTIRE NINTH CIRCUIT COUNCIL  
OF 2001 AS HIS APPARENT CRIMINAL CO-CONSPIRATORS**

Kozinski offered no real defense for the multiple crimes that he committed. Instead he confessed them, publicly bragged about them, re-created them on a film in which he starred and boasted to the public media about how he had committed the felonies. Instead of a factual defense he made ad-hominem and at times vicious attacks against Judge Nelson, me, the CAT Committee and the AO staff. He threatened lawsuits against Judge Nelson and my Associate Director Pete Lee. He made false charges in the media where his faithful press lackeys printed everything that he wanted them to. Now that a complaint has been filed against him by a California lawyer on September 27, 2008, Kozinski's lawyer and Judge Sydney Thomas have belatedly offered what purports to be a defense. They were quoted in a Bloomberg News article of October 1, 2008 by a very careful writer, Cynthia Cotts, who actually checked out her sources and sought informed comment. (See Exhibit 2) Judge Thomas said that "the deactivation of parts of the monitoring software was unanimously approved by the Judicial Council of the Ninth Circuit." Thomas, of course, was an apparent accomplice with Kozinski in committing his felonies who joined him in illegally entering the secure Internet Security Gateway area and assisted him in his sabotage of the Security System. Kozinski's lawyer, Mark Holscher, said "Disconnecting the servers was unanimously approved by order of the Ninth Circuit Judicial Council." No doubt Kozinski's lawyer, Holscher, and his accomplice Judge Thomas faithfully described the unanimous votes of the Ninth Circuit Council. However this is hardly a defense. All that they did, in effect, was to provide conclusive evidence that all of the members of the Council, including Chief Judge Schroeder, apparently were criminal co-conspirators in the crimes committed by Kozinski. It is shocking that a Circuit Council which is supposed to be responsible by law to discipline Judges for misconduct would actually vote in advance to approve the commission of crimes by a Judge! The Ninth Circuit Council had no authority whatever over the Gateway facility. It had no jurisdiction, no responsibility, and indeed no role whatever to play with respect to the secured Internet Security Gateway. The Gateway was totally under the jurisdiction of the Committee on Automation and Technology (CAT) acting for the Judicial Conference of the United States and its agent the Administrative Office of the United States Courts (AO). Under the direction of CAT, the AO did all the planning and all the work in establishing the Security Center, bought and owned all the equipment, designed the facility itself, and provided added personnel to run it independent of the Circuit. The Circuit Executive made an agreement with CAT and the AO to work with AO personnel but acted independently of his assignment with the Circuit. He took his orders from the AO, not from the Circuit Council or the Circuit Chief. He had no authority to turn the facility on or off or to make any changes whatever without the approval of the AO and CAT. The Ninth Circuit Chief Judge and the Circuit Council were not in any way involved in the creation and management of the Security

Gateway. Thus, the so-called Kozinski defense instead becomes an indictment of Judge Schroeder, Judge Thomas and the entire Circuit Council by acknowledging their role as apparent criminal co-conspirators in the crimes committed by Kozinski.

**CHIEF JUSTICE ROBERTS TRANSFERS JUDICIAL MISCONDUCT  
COMPLAINTS AGAINST JUDGE KOZINSKI TO THE THIRD CIRCUIT**

On June 16, 2008, the Chief Justice of the United States the Honorable John G. Roberts Jr., received a request from the Judicial Council for the Ninth Circuit Court of Appeals to transfer a Judicial Misconduct proceeding against Chief Judge Alex Kozinski of the Ninth Circuit to the Judicial Council of another Federal Judicial Circuit because of the obvious conflicts of interest of members of the Ninth Circuit Council. On that same day, Chief Justice Roberts transferred the complaint against Judge Kozinski to a special Committee of five Judges from the Third Circuit Chaired by Chief Judge Anthony J. Scirica.

In his letter of June 16, 2008 to Judge Scirica, Chief Justice Roberts said that the Judicial Council of the Third Circuit is empowered broadly "to exercise the powers of the Judicial Council with respect to the identified complaint and any pending or new complaints relating to the same subject matter." Therefore all existing complaints against Judge Kozinski were to be consolidated with the June 16<sup>th</sup> complaint and considered by the Third Circuit along with any new complaints relating to the same subject that may be filed. (See Exhibit 4)

I understand that a California attorney Cyrus Sanai already filed at least one misconduct complaint pending against Judge Kozinski and then filed a new complaint on September 27, 2008. He attached to it a copy of a 16 page statement I submitted on October 12, 2007 to Judge Ralph K. Winter Jr., Chairman of the Judicial Conference Committee on Judicial Conduct and Disability in which I documented the commission of several felonies by Judge Kozinski on May 24, 2001. Virtually all of them involved criminal conduct by Judge Kozinski intended to assure that illegal pornography and music could continue to be downloaded on Federal Court computers without the possibility of detection. Therefore, the subject of the 2008 complaint filed on June 16, 2008 triggered by an LA Times article of June 12, 2008 (See Document 1) and the illegal actions taken by Judge Kozinski in 2001 involve the same subject, Judge Kozinski, and the same subject matter, namely pornography. Since this new or revised complaint to which my earlier statement is attached is now before your Committee and since you have been directed by Chief Justice Roberts to consider all such old and new complaints, I submit the following statement in support of these complaints. The Third Circuit Council should consider this document to be a new complaint filed on the same subject, Judge Alex Kozinski, and the same subject matter, pornography. I believed in 2001 that as a matter of organizational propriety, I should not submit a complaint against Judge Kozinski for his felonious conduct since I was an employee of the Judicial Conference of the United States presided over by Chief Justice William H. Rehnquist. I also naively assumed that either the Ninth Circuit Council would carry out its legal duties and

responsibilities which obviously was too much to expect since the Council approved in advance Judge Kozinski's crimes likely making the Council members criminal co-conspirators with Judge Kozinski, (See Exhibit 2) or that the Conference Executive Committee would follow the direction of Chief Justice Rehnquist. This too proved to be naïve.

**MULTIPLE FEDERAL CRIMES WERE COMMITTED IN 2001 BY JUDGE  
ALEX KOZINSKI BUT THE NINTH CIRCUIT COUNCIL FAILED TO TAKE  
THE REQUIRED DISCIPLINARY ACTION**

On May 24, 2001, by his own publicly proclaimed admission Judge Alex Kozinski of the Ninth Circuit Court of Appeals illegally seized and sabotaged the Judiciary's vital Internet Security Gateway in San Francisco. His irresponsible action threw open the confidential records of all Federal Judges and Federal Courts to thousands of hackers from throughout the world. As a result, countless hackers broke through into at least 46 Courts and gained access to highly confidential Judicial files. A Security expert for the U.S. National Security Agency (NSA) said that Kozinski's action from a security standpoint was not only foolish but "insane." Not only was it "insane," Kozinski's actions were also criminal. Attached (See Exhibit 5) are NASA letters stressing the critical nature of the Internet Security Gateway to assure the security of the Judiciary which was criminally sabotaged on May 24, 2001 by Judge Kozinski.

In addition to the Kozinski sabotage felonies, CAT Chairman Judge Ed Nelson reported in a letter to all United States Judges dated August 28, 2001 that Kozinski also violated Federal appropriations law. (Copy available at the AO) He cited 31USC1301 which states: "an appropriation shall be applied only for the objects for which the appropriations were made, except as otherwise provided by law." Judge Nelson then stated: "In applying this statute it is axiomatic that Federal monies are to be expended to further the agencies related purposes." Quite clearly there is no official purpose for Federal Judges to download pornography in Federal Courts on Federal computers. (Available at the AO) The Judicial Conference Committee on the Budget, which defends the Judiciary's Budget on Capitol Hill, was so concerned about the probable harmful impact on Congress of Judge Kozinski's illegal actions that at its July 2001 meeting the Committee members unanimously resolved that: "The Judiciary should take steps to ensure that Judiciary automation, property, and facilities are used for official purposes." The Committee was fearful that Kozinski's open defiance of Federal law would lead to a reduction in the Judiciary's appropriations and the Committee obviously did not feel that his support of downloading pornography in the Courts was an official use of Federal funds. The Committee approved a resolution commending the AO's Internet security efforts under the CAT policy.

In that same letter Judge Nelson listed other legal and ethical responsibilities of Judges and Court staff which were also violated by Kozinski: "The Judiciary is accountable both to Congress and the public for the manner in which it expends funds and manages its resources." Moreover, the canons in the Judicial Code of Conduct requires Federal Judges and Court employees to "respect and comply with the law and

they should act at all times in a manner that promotes public confidence.” Kozinski violated the Code of Conduct by undermining “public confidence” in the Judiciary through his crimes.

### **KOZINSKI COMMITTED AT LEAST TWO FELONIES ON MAY 24, 2001**

Top Judiciary and General Services Administration (GSA) attorneys found that Kozinski committed at least two felonies in violation of Federal Criminal statutes which call for imprisonment of 1-10 years and fines of \$1,000-\$10,000. Title 18, Section 1361 makes it a felony “to willfully injure any property of the United States” (such as the Judiciary’s Internet Security Gateway.) Likewise, Title 18, Section 1362 defines an even more serious felony “to willfully injure or destroy any means of communication operated or controlled by the United States” (such as the Judiciary’s Internet system.) (The full statutory text is attached as Exhibit 6.) Chief Justice Rehnquist agreed that Kozinski had violated both of these statutes.

### **CAT AND AO HAVE SOLE CONTROL AND AUTHORITY OVER THE SAN FRANCISCO GATEWAY – THE NINTH CIRCUIT HAD NO JURISTITION OR AUTHORITY**

With the approval of the Judicial Conference of the United States (JCUS) and at the direction of the Conference’s Committee on Automation and Technology (CAT,) the Administrative Office of the United States Courts (AO) established and was given sole control over three Internet Security Gateways. The Judicial Conference at its September 1997 session unanimously delegated to the CAT Committee authority to manage all Internet access Judiciary wide. In turn CAT delegated its responsibility to the AO under the policy supervision of CAT. The Director of the AO also has broad direct statutory responsibility over the Judiciary’s Internet and computer activities. For example (See 28U-SC. }612, the Judiciary Information and Technology Guide and 28 U.S.C. }604. As Judge Nelson points out in his letter to all Judges on July 28, 2001 (AO Director James Duff ordered his staff not to give me a copy) “...the National Gateways have been funded, operated, maintained and supported by the Administrative Office primarily because of the need to maintain a consistent security posture and also because of the potential workload of the Courts.” He reaffirmed that “operations and security of those Gateways were under the administrative, managerial, and logistic control of the Administrative Office, subject to the direction of the Conference or where appropriate Conference Committees.” (E.g. CAT) One was sited in San Francisco and secured internet communications for the Eighth, Ninth and Tenth Circuits. Several other Circuits were secured by a Gateway in New Orleans and the remainder of the Circuits by the AO at Washington DC. The AO entered into security custodial agreements with the Circuit Executives for the Ninth and Fifth Circuits to assist the AO in operation of those Gateways under sole direction of the AO while the AO managed the Washington DC Gateway. The Circuit Executives were responsible only to the AO which made all operating decisions under policies established by the Judicial Conference as delegated to CAT by the Judicial Conference.

Because the security of Judges and Court communications must be fully protected, the Ninth and Fifth Circuit Executives agreed to faithfully observe and follow the AO and CAT requirements that the security gateway equipment must be kept under tight security with access controlled solely by AO through the two Circuit Executives and AO furnished Gateway Staff. No one else was allowed to have access without AO approval. The sensors at the Gateway could only be turned on or off or modified at the direction and with the approval of the AO. (See Exhibit 7) At the Ninth Circuit Internet Security Gateway, for example, only the Circuit Executive, Greg Walters was permitted by the AO to access the facility plus those few Circuit employees agreed to in advance by the AO which remained ultimately responsible. The agreement was solely between the Circuit Executive and the AO.

The AO bought and held title to all of the equipment required to establish and maintain the Gateways. The AO had and still has the sole responsibility to establish the operational standards for and to maintain the three Gateways. The AO then installed the equipment and provided the added staff needed to run the Gateway who responded locally only to the Circuit Executives and the AO but the Gateway logs had to be sent to the AO. No other Circuit employee or Judge could have access to the Gateway without the express authority of the AO. Thus when Judge Alex Kozinski along with his two accomplices, Circuit Judge Sidney Thomas and Circuit Executive Greg Walters illegally entered the Internet Security Gateway facility at San Francisco on May 24, 2001, Greg Walters was in violation of his agreement with the AO since he improperly allowed others to enter illegally. The other two were illegal trespassers namely Kozinski and Walters. Walters, however, had no authority to provide entry to Kozinski or Thomas to turn off and thus sabotage the Gateway as they committed at least two felonies, several misdemeanors, and violated appropriations law while breaching the Judicial Code of Ethics. When confronted with his illegal action, Walters told a senior member of my staff that he knew that he didn't have any authority to do what he did, and stated "No, but I control the plug." Thus he confessed that he violated his position of trust and aided and abetted Kozinski in committing his crimes. The Gateway could only be turned off with the express permission of the AO and/or CAT and in cooperation with the Eighth and Tenth Circuits. To sabotage it and violate Court security and endanger the confidential Court records of all the Judges and staff in the Eighth, Ninth and Tenth Circuits with no notice given to them by Kozinski or by his with his fellow conspirators compounds the crimes!

**CHIEF JUSTICE REHNQUIST WAS OUTRAGED BOTH BY THE BEHAVIOR  
OF JUDGE KOSINSKI AND THE FAILURE OF THE NINTH CIRCUIT  
COUNCIL TO DISCIPLINE HIM**

Almost immediately after the Kozinski felonies of May 24, 2001, I had the unwelcome responsibility to brief Chief Justice Rehnquist about the sabotage of the Internet Security Gateway by Kozinski with his accomplices Judge Thomas and Greg Walters, acting in complicity with Chief Judge Mary Schroeder and the entire Circuit Council, all of whom also failed to take any disciplinary action against Kozinski. I worked with Chief Justice Rehnquist for 18 years and I never saw him so outraged as he

was when he learned of the indefensible criminal acts of Kozinski and his total indifference to the security of his fellow Federal Judges coupled with the irresponsibility and the utter failure of the Ninth Circuit Council to act to discipline Kozinski by Schroeder. He told me to "direct" the Judicial Conference Executive Committee to convene an "emergency meeting" to "sternly discipline" Kozinski and the Circuit Council. He said that "slapping them on the wrist or a remonstrance was not enough." Through me, he also directed the Executive Committee to consider cutting off all funds for the Ninth Circuit Council's automation program, stripping them of the money until such "stern disciplinary action" was taken against both Kozinski and members of the Council and Walters who aided and abetted him in his felonies. (See Exhibit 12) He also asked the Executive Committee to consider removing contracting authority from the Circuit Court.

In the face of Kozinski's criminal acts and the administrative failure to protect the Judiciary's reputation, Chief Justice Rehnquist was shocked further when a majority of his own Conference Executive Committee, in the Chief's words, "capitulated to Kozinski" and failed to discipline him. Rehnquist soon thereafter took two swift actions. First, he ordered me to remove immediately the Internet Security Gateway from San Francisco and indeed from the entire Ninth Circuit so that neither Kozinski nor Schroeder nor the Ninth Circuit Council or the Circuit Executive, Greg Walters, could illegally sabotage it again. Secondly, he also directed me to withdraw the extra personnel the AO had assigned to the Ninth Circuit Executive to assist in running the Security Gateway. He said it was imperative that the Eighth and Tenth Circuits, who also were protected by the same San Francisco Gateway, not be harmed again since they had already been damaged seriously by the Ninth Circuit's internet sabotage without providing any notice to them. The AO moved the Gateway to Kansas City, MO. He later turned down flatly the nomination made by Judge Schroeder of Judge Sidney Thomas, who reportedly assisted Kozinski in his criminal sabotage, to fill a Ninth Circuit vacancy on the CAT Committee. That very Committee had been viciously assailed by Judge Kozinski for upholding Federal law and was also assailed by Judge Schroeder. The Chief Justice was amazed that such a nomination of a criminal co-conspirator who defied the authority of CAT would even be made by Judge Schroeder, and he accepted my recommendation to appoint instead Chief Judge Lynn Winmill (D. Ida.) to the CAT vacancy. In his anger he told me to "tell Kozinski to watch pornography at home and not in his own Court."

It was painfully obvious to both the Chief Justice and to me that Judges Kozinski and Schroeder totally ignored the incumbent CAT member who represented the Ninth Circuit at that time, Judge Roger Strand (D; Ariz.) He is an expert on the Judiciary's computer systems and the San Francisco Security Gateway. Indeed, Judge Strand is a pioneer in the Judicial Branch in computer utilization in the Courts. He participated fully in the CAT policy decision to require the AO to make a broad band-width study because of the costly exploding use, much of it for illegal purposes as it turned out. He knew that Judge's e-mail could not be read by the AO, nor could individual Judge's and staff computers be accessed. It is abundantly clear that Judges Kozinski and Schroeder did not consult their representative on CAT because the facts would have interfered with their crusade to protect continued Court access to pornography.

**JUDICIAL CONFERENCE EXECUTIVE COMMITTEE "CAPITULATED TO  
THE NINTH CIRCUIT COUNCIL LAWBREAKERS**

The Judicial Conference Executive Committee has been referred to throughout this complaint. It is important to know that all Judicial Conference Committees are appointed by the Chief Justice in his statutory role as presiding officer of the 27 member Conference which is the National Policy making body for the Judicial Branch. He also appoints the 7 Judges to the Conference Executive Committee who with the AO Director make a total of 8 voting members. The Executive Committee is unique however because the Chief Justice created the Committee to in effect monitor and coordinate the activities of the Conference and its Committees as his agents. Each of the Committee members make a commitment before being appointed that they will follow the lead of the Chief Justice and if they are in disagreement with him on any given issue then they agree to resign and function only in their positions on the Conference.

In responding to Kozinski's sabotage and felonies which were approved in advance by Chief Judge Schroeder and the Ninth Circuit Conference, virtually all of the Executive Committee were disloyal to the Chief Justice, broke their word, and refused to approve his firm direction that the Conference and the AO should crack down on the Ninth Circuit offenders. (See Exhibit 13) I worked with and served on the Executive Committee for 21 years and I never saw such blatant disrespect for the Chief Justice as that displayed by the Executive Committee which he viewed as "his Committee." None of them had the moral courage, to keep their agreement and to resign from the Executive Committee and serve only on the Conference. Instead, in the words of Chief Justice Rehnquist, the Executive Committee "capitulated" to Kozinski, Schroeder and the Ninth Circuit Council or, as Kozinski said, they "surrendered".

In mid 2001, the term of one member of the Executive Committee expired. He was replaced by Judge Thomas Hogan. At a break in its August 2001 Santa Fe meeting, Judge Hogan pulled me aside and said "Ralph, can't we do something to better vet the people who are asked to serve on the Executive Committee so that we can get Judges who are loyal to the Chief Justice?" I told him that I had tried and had been successful for many years except for the majority of the then current group of the Executive Committee. Three of the members of the Executive Committee had said openly in the meeting, namely Judge Becker, Haden and Butler, that the Chief Justice was only one member of the Judicial Conference and was entitled to no deference whatever. This came from members who had agreed to represent the Chief Justice as his agents on the Executive Committee and to resign if they could not do so. So much for integrity!

**INITIALLY THE EXECUTIVE COMMITTEE ACTED RESPONSIBLY**

Until May 30, 2001, the Executive Committee did take a responsible course of action with respect to assuring that the Internet and Court computers be used only for legal purposes and appropriate activities. For example, in March 2001, the Executive Committee instructed the AO to continue the Conference policy to provide notice to

Chief Judges in those cases where detection software indicated an illegal or gross misuse of government resources in the use of the Internet in their Courts. This reaffirmed the long standing policy adopted by the full Judicial Conference itself in 1987.

On March 14, 2001, the Executive Committee sent out a memo to all Chief Judges. It stated: "Over the past few weeks it has come to our attention that the Judiciaries Internet resources have been severely taxed by the transmission of huge amounts of material. This extraordinarily heavy use is costing the Judiciary a great deal of money. It also impacts the Data Communication Networks total capacity and our ability to use the Internet."

"Looking further, it appears there has been a troubling increase in apparent improper use of the Judiciaries communications facility. These include downloads of movies, [MPG files] and photographs [JPG and GIF files] as well as music [NAPSTER and others.] An examination of the names of many of these sites suggests that they are extremely unlikely to involve a course legitimate business," the memo stated.

"As a Committee, we are asking you to share this memorandum with other Judges and emphasize to your Court and its employees the necessity for appropriate use of the Judiciaries Internet facilities. A firm policy such as this "with regular reiteration of that policy, and a quiet suggestion from concerned Judges can go a long way in protecting the Judiciary and to saving a significant amount of government funds."

This memorandum from the Executive Committee is somewhat sanitized by failing to spell out that the "movies" referred to were almost entirely pornographic movies including child pornography judging from the titles of the materials downloaded in the Courts. But the thrust is clear, Judges and Court staff should obey the law, even the Ninth Circuit Council.

#### **EVALUATION OF KOZINSKI BY CHIEF JUSTICE REHNQUIST AND TWO JUDICIAL LEADERS**

Soon after the Ninth Circuit Council's complicity in and later covering up the Kozinski's felonies and after the "capitulation" of the Executive Committee to the demands of Judges Kozinski and Schroeder, Chief Justice Rehnquist subdued his anger long enough to philosophize about the situation. When we met on June 13, 2001 he expressed the hope that "the Executive Committee "would stiffen their backs" and repudiate Kozinski and discipline the Ninth Circuit Council." But, of course they defied him and refused once again. Then, with respect to Judge Kozinski, Chief Justice Rehnquist said that "Alex was always unstable." He went on to say: "Inevitably he will overreact and then we can hit him." In a similar vein, Chief Judge Carolyn King, a member of the Executive Committee, who was to become Chair soon after, told the Executive Committee: "He has a screw loose." She went on to say that she "is waiting to deal with him and kill him with a cannon." Likewise, Judge John Heyburn, Chairman of the Judiciary's Budget Committee, which was deeply upset by Kozinski's lawlessness,

fearing that it would lead to a reduction in the Judiciary's appropriations, counseled me personally to "pull back." Then he said "Let Kozinski kill himself."

As shown in the LA Times on June 14, 2008 and elsewhere, (See Exhibit 1) Kozinski has fulfilled the prophecies of Chief Justice Rehnquist and Judges King and Heyburn by among other things, maintaining a publicly accessible pornographic website which he acknowledged he shared with his friends. Thus Kozinski has once again embarrassed the Federal Judiciary and held it up to ridicule through his misconduct. But this time, the Third Circuit Council has the opportunity to correct the gross mistakes and serious failures made in 2001 caused by the forfeiture of responsibility by the Ninth Circuit Council and the "capitulation" of the Executive Committee to Kozinski, Schroeder and the Circuit Council as described by Chief Justice Rehnquist.

Not surprisingly, Judge Kozinski himself agreed with the Chief Justice's description of the Executive Committee's gross failure as "capitulation" when a majority refused to carry out the Chief's to discipline Kozinski for his criminal sabotage of the Internet Security Gateway. Kozinski told AO General Council Bill Burchill, on June 17, 2001, that "it was not a capitulation but a surrender by the Executive Committee." I am sure that Kozinski thinks that the Third Circuit Council will "capitulate or surrendered" to him as well but I am confident that he is wrong. At long last he should pay the price both for his multiple violations of criminal law and for his cavalier violation of the Judicial Code of Conduct and for his total defiance of the Chief Justice and the Judicial Conference. This is particularly required since Kozinski openly bragged about and thus confessed his crimes publicly to the media after seeking out reporters to do so. Indeed he boasted and bragged about his success in openly violating the law but without paying any price thus far.

#### **KOZINSKI - A LONG TIME PROTECTOR AND USER OF PORNOGRAPHY**

As noted, in June of 2001, Chief Justice Rehnquist told me to tell Alex to watch pornography in his home not in his Court. According to the expose in the LA Times and other National media (see Exhibit 1) during June 2008, Judge Kozinski admits he watches pornography, at least at home where he has a substantial display of pornography that he himself termed as "gross." It appears on his website and is accessible to the public including to the LA Times. Earlier, Kozinski admitted to the New York Times in 2001 that one of his law clerks downloaded pornography on his court computer. The extent to which there was similar downloading in his chambers by Kozinski and his law clerks during that period or since then has not been revealed either to the press or the Judiciary. Perhaps the Ninth Circuit's own study released to its Circuit Council in April 1998, which was based upon direct examination of downloading by Judges and Court employees in the Ninth Circuit, prior to April 1998 would reveal whether or not this was an extensive practice by Kozinski and his law clerks. He told the LA Times on June 11, 2008 that "he began saving the sexually explicit materials...years ago." It is quite possible that he illegally downloaded some of his current pornography collection on Federal Court computers at least as early as 1987. Moreover, Judge Schroeder most unwillingly received a violation letter in 2001 from the AO stating that band-width

studies had revealed there were instances in her own Circuit Court of illegal use of computers including down-loading of pornography. The AO could not identify the computers used or the actual users. However, each site accessed listing had an IP code which enabled her to determine who the offenders were. Therefore, if Judge Kozinski or his clerks or Judge Schroeder were among the illegal down-loaders at that time, Judge Schroeder would know. Therefore, you may wish to request from her the list showing the offenders in her Court to determine if Kozinski and/or his Clerks was involved or incriminated at that time. Of course, the CAT ordered study undertaken by the AO in 2001 would not be helpful since it was confined solely to broad band-width utilization; so individual computers and Judges E-mail were not examined by the AO as they were in 1998 by the Ninth Circuit.

### **JUDGE KOZINSKI PUBLICLY CONFESSED TO AND BOASTED ABOUT HIS INTERNET SECURITY CRIMES**

Judge Kozinski not only publicly confessed his criminal acts but he blatantly boasted about his felonies in both local and National media. (See Exhibit 7) As the star performer, he described himself, Judge Schroeder and the Ninth Circuit Council members as "rebels in black robes," and "insurrectionists" in the New York Times in August and September 2001. Moreover, he was so proud of his crimes committed as he undermined Judicial security on May 24, 2001, that he actually had a camera crew brought in to film a reenactment of them with himself as the star performer. (Film on file at the University of Utah Marriott Library) (I'm surprised he didn't seek an "Oscar" as the "Number One Hottie in the Judiciary.") He made the film available throughout the country, including a showing at a special meeting held in the Eleventh Circuit at Jacksonville, Florida for all Court technical experts as well as for some Judges. Also at the meeting was the Chairman of the Judicial Conference Committee on Automation and Technology (CAT), Judge Ed Nelson. Judge Nelson angrily condemned both Kozinski and the film before all of the attendees and also accused him of making false and malicious attacks not only upon him but upon all of his 13 fellow Judges who served on the CAT Committee.

During the Gateway shutdown period between May 24<sup>th</sup> and June 2, 2001, Kozinski participated in a video program with several reporters and other commentators entitled, "Cyber time." (See Exhibit 7) A reporter commented that "Kozinski pulled the plug himself" speaking of Kozinski's sabotage of the Internet Security Gateway at San Francisco. Kozinski responded: "I went up to the room where all the computers are. A bunch of servers right next to each other. Somebody pointed out the server that was doing the monitoring. I went to it. I hit the 'shut down screen' and I told it to turn itself off." The reporter then reacted by saying: "Kozinski plans to keep the system off until the Judicial Council of the Courts tells him otherwise, but disabling the office monitoring isn't an option for most people." Although Kozinski omitted several key facts, his boast that he openly violated Federal Criminal law is all too accurately presented.

In an interview with Newsweek magazine for September 13, 2001 Kozinski discussed the multiple crimes he had committed. He then asked the reporter rhetorically about his illegal sabotage actions: "What is a Judge to do?" For Kozinski, unlike other

Federal Judges, the answer was to flagrantly violate Federal criminal law to enable him and other Judges to continue to illegally download pornography on Court computers and not be detected. Kozinski clearly was convinced that he was above the law, while virtually all other Federal Judges would have obeyed the law except for a few on the 2001 Ninth Circuit Council.

**NINTH CIRCUIT LEADERS LED BY CHIEF JUDGE MARY SCHROEDER  
COVER UP THE KOZINSKI CRIMES**

The then Chief Judge, Mary Schroeder, and her entire Ninth Circuit Council knew of the planned criminal internet security sabotage by Kozinski and voted in advance to approve of his crimes. Kozinski was accompanied in committing the crimes by two accomplices, the Ninth Circuit Executive, Greg Walters, and reportedly by Ninth Circuit Court Appeals Judge Sidney Thomas. (See Exhibit 2) Once the felonies were committed by Kozinski et al., they were not only ignored by the Circuit Council but Judges Schroeder and Kozinski aided by other Council Judges, swiftly acted to cover them up entirely. As apparent criminal co-conspirators, they utterly failed to carry out their statutory responsibilities and ethical duties required under The Judicial Conduct and Disability Act of 1980.

Just a week after the Kozinski criminal sabotage and while hackers still had free access to Court records everywhere, Judge Schroeder, speaking before all the Ninth Circuit Judges at a meeting held in Alaska on May 31, 2001, proudly proclaimed: "We are playing brinksmanship with the Judicial Conference" in sabotaging the Internet Security Gateway at San Francisco. Thereby, she boasted that she aided and abetted in the commission of the crimes by the Chief "brinksmen," Alex Kozinski. She also told the Judges in Alaska that "she didn't like it but it is sometimes is necessary" to take such action. Quite clearly to her and to Kozinski their desired ends justified the criminal means. She only revealed one such "end" at that time by saying that she was "fearful" that "revelations about pornography downloading in the Courts could compromise and undermine the candidacy of some of her Judges for positions on the Circuit and the Supreme Court." She said "they could be embarrassed in nomination hearings." Likewise she repeated this same astonishing justification in her memorandum of July 11, 2001 to all Chief Judges which was otherwise laced with inaccuracies and misstatements. (AO Director James Duff ordered his staff not to give me copies of the two Schroeder letters) Therefore one of her objectives was to keep the whole pornography downloading scandal away from Congress so that the information would not embarrass any future nominations of some Ninth Circuit Judges. She didn't disclose who they were, however. She is likely to have known, however, based on the violation reports to her from the AO to other Chief Judges.

**JUDGES KOZINSKI AND SCHROEDER DEMANDED THAT ONLY 2 OF THE  
180 INTERNET GATEWAY SENSORS MUST REMAIN PERMANENTLY  
DISABLED - THE TWO THAT DETECT PORNOGRAPHY AND ILLEGAL  
MUSIC**

Judges Schroeder and Kozinski and the entire Ninth Circuit Council played "brinkmanship" not only with the Judicial Conference of the United States but also with Chief Justice William H. Rehnquist (who condemned the Kozinski and Schroeder actions) as well as with the 14 CAT Committee member Judges all of whom correctly believed that even Federal Judges must obey Federal law. Of the 180 sensors located at the Security Gateway at San Francisco, Kozinski and Schroeder agreed to turn on 178 of them. But they demanded that the two sensors which detected illegal pornography and illegal NAPSTER music must never be turned on again. These "brinksmen" held the gateway and the security of all Judges hostage for ten days until their demands were met by the Executive Committee. Thus, they revealed their sole policy objective: Judges, their law clerks and Court employees must be free to download pornography and illegal music on their Court computers, on Court time, in Court buildings all paid for by Federal taxpayers and that these illegal uses must not be detected! In short they acted not out of concern to protect the privacy of Judges E-mail or their computers which were not monitored by CAT or the AO but only to assure that pornography and illegal music could continue to be downloaded in the Courts.

In summary, 178 sensors were turned on again on June 2, 2001 but not the two that detected pornography and illegal music. Through Kozinski and Schroeder and their criminal co-conspirators, thousands of hackers had ten days of free access to Judge's and Court's confidential records while Kozinski and Schroeder held the security gateway hostage. It is known that at least 46 Courts were penetrated by hackers and perhaps many more. This all came at a time when the Chinese, angered by an American "spy" plane which crashed there, vigorously sought to destroy or compromise websites in the United States.

**JUDGES SECURITY WAS OF NO CONCERN TO JUDGES KOZINSKI AND SCHROEDER - WHO GAVE NO NOTICE TO THE COURTS OF THEIR INTERNET SECURITY GATEWAY SABOTAGE**

Judges Kozinski and Schroeder and the entire Ninth Circuit Council evidenced no concern for the security of Judges in their own Courts when they colluded to disable the Internet Intrusion Detection software located in San Francisco. Shockingly, they did not bother to warn any of their fellow Ninth Circuit Judges of the planned security shutdown so they could protect their records. Even worse, they did not say one word to the Judges and Courts in the Eighth and Tenth Circuits which also were to be protected at the San Francisco Internet Gateway run by a special staff under the AO under agreement with the CAT Committee. Their failing to give any notice whatever led to some justifiably sharp criticisms from the other two Circuits. For example, an angry letter of protest was sent to Chief Judge Schroeder by Chief District Judge Dean Whipple (W.D. Mo.) chiding her for her lack of notice and for her indifference to the security problems arising in his Court caused by the Kozinski crimes. He said "his Court was seriously exposed to intrusion attempts on 100% of our Court and Bankruptcy files." (Letter available at the AO)

Realizing the seriousness of the security problem not only in the Eighth, Ninth and Tenth Circuits, but also throughout the country, since sophisticated hackers could

break through to all those Courts as well, I issued a warning letter on June 15, 2001, to all Courts urging them to take immediate protective action necessitated by the Ninth Circuit's disabling and shutting down of the Internet Security System Gateway. (AO Director James Duff ordered his staff not to provide me with a copy of my warning letter) Judge Schroeder's reaction to my warning about the serious breach of security caused by her Circuit was to attack me in calls she made to the Conference Executive Committee members for daring to warn the Courts. Obviously, she was outraged by my truthfully naming her and other Ninth Circuit leaders as the sole creators of the crisis which endangered Court security nation-wide and all without providing notice. She demanded that either I or the Executive Committee write a follow-up letter to all Judges completely exculpating the Ninth Circuit while at the same time minimizing the scope of the security threat. Since such a letter would have been a total lie, even the Executive Committee, which had "capitulated" or "surrendered" earlier to her and Judge Kozinski, refused her demand that we deliberately mislead the Courts to meet her request. But undaunted, Judge Kozinski launched a long campaign of false, and misleading assaults throughout the Judiciary against the CAT Committee Judges, particularly its Chairman Judge Ed Nelson, and against me and the AO staff. He displayed no contrition or remorse for his crimes or for endangering the security of Federal Judges. There was just his misleading campaign of bullying and intimidation coupled with public bragging about his felonies.

**JUDGES KOZINSKI AND SCHROEDER CONDUCT A MAJOR  
DISINFORMATION PROGRAM IN 2001 TO MISLEAD JUDGES, CONGRESS  
AND THE MEDIA**

Judges Kozinski and Schroeder conducted a major misinformation campaign within the Judiciary. To illustrate, Judge Schroeder sent memos to the Executive Committee on June 29, 2001, and to all Chief Judges on July 11, 2001, attempting to defend the complicity of her Circuit Council in endangering the security of all Judges and Courts, all without notice. She attacked the CAT Committee and the AO in a series of largely inaccurate, misleading and false statements. Attached is a detailed response to her letter and a refutation prepared by AO computer experts in cooperation with CAT Chairman, Judge Ed Nelson. As can be seen, Schroeder on July 11<sup>th</sup> retreated even from many of her gross inaccuracies in the June 29<sup>th</sup> letter. (See Exhibit 8)

These internal actions were accompanied by Kozinski's greatly expanded crusade to mislead Judges and to misinform the National and local media, including the New York Times, Newsweek, The Wall Street Journal on September 4, 2001, (See Exhibit 12) local publications in California and any others who would listen to him. His representations were riddled with inaccuracies and falsehoods and libel. (See Exhibit 9 and Part II). For example, he falsely posed as a conquering hero allegedly protecting the internet privacy of Judges. But he was no Robin Hood! To the contrary, he robbed Judges of both their internet privacy and security by permitting hackers worldwide, to compromise confidential Court records and internal communications. He did this solely to insure that he and some Judges and Court staff in his Circuit and throughout the Country could continue to download pornography illegally in their chambers while not being detected. He falsely claimed that the CAT Committee and the AO examined each

Judge's computer and read their e-mail. Absolutely none of these charges was true and what is more, Kozinski knew it directly from Judge Nelson and others! But he did not let the truth get in the way of his propagandizing the media and his fellow Judges by knowingly presenting inaccurate and misleading information.

At no time did the Judicial Conference or the CAT Committee or the AO examine Judge's computers, read their e-mail, or place "blocking" filters on their computers so they could not receive pornography or illegal music as the Ninth Circuit itself did in 1998. Moreover, many Judges already had been provided by the AO and CAT with the ability to encrypt their e-mail so it could not be read by others. Indeed, by the end of 2001, virtually every Judge in the United States could do so; so much for alleged "spying" on Judges E-mail as untruthfully charged by Kozinski!

The facts are that CAT directed the AO to examine only broad internet band-width usage by the Courts nationwide to determine why there had been an explosive and costly increase in band-width use in 2000 and 2001. This was done solely at 3 secured Internet Gateways not in any Court! Therefore, the AO examined only such band-width usage and not individual computers and most certainly did not and could not read Judge's e-mail as Kozinski spuriously claimed as he tried to cover up his felonies. Of course, from a tactical point of view, Kozinski's false claims about allegedly protecting Judge's privacy sounded much more appealing to the media and Judges than the truth, namely that in fact he was trying solely to keep illegal pornography in the Courts undetected.

Unfortunately, the AO's band-width study, directed by CAT, revealed that over 50% of the growth in the Judiciary's band-width usage was to massively download pornography and a much smaller portion to download illegal music. (Available at the AO) Of course, this illegal waste of tax-payers money was of no concern whatever to Judge Kozinski even though it gravely embarrassed the Judicial Branch when these facts were revealed in June 2001, to the Houston Chronicle by Judges who were aware of them. (Available at the AO) This article was then picked up all over the Country to the embarrassment of the entire Judicial Branch when readers were told that many Judges, law clerks, and Court staff were downloading and possibly watching pornography in Federal Courts.

#### **KOZINSKI'S DEMAND THAT I BE "FIRED" WAS SUMMARILY REJECTED BY THE JUDICIAL CONFERENCE**

Immediately prior to the September, 2001, session of the Judicial Conference of the United States with Chief Justice Rehnquist presiding, Kozinski demanded that I be fired immediately. As I was told by Conference member Judge Thomas Hogan, Kozinski, in support of his insistence that I be fired, faxed over fifty pages of false and misleading information to all 27 members of the Conference the day before the Conference met. Fortunately, by then the Conference members knew the facts and were aware of Kozinski's gross misstatements and outright lies made during the preceding months. Even though Kozinski told a newsman that I would be out of a job in a few days, the Conference summarily rejected his request. The Conference not only refused

his demand out of hand but also pointedly declined even to discuss his lengthy screed against me. Even that majority of the Conference Executive Committee which 4 months earlier had "capitulated" to Kozinski by letting him get away free with his felonies didn't lift a finger to support Kozinski. I believe they had guilty consciences accentuated by the Chief Justices written rebuke of them in his June 20, 2001 because of their failures to discipline Kozinski and the Ninth Circuit Council as they were directed by Chief Justice Rehnquist. (See Exhibit 12)

During this same period, Kozinski assailed me in The Wall Street Journal for September 4, 2001, in an op. ed. essay which included multiple false charges and libels against me and an irrelevant claim. (See Part II) Uncharacteristically, The Journal sullied its reputation by making no effort whatever to verify the false Kozinski charges and didn't bother to call me for comment despite the fact that nearly the entire essay was a personal assault on me. Added to this statement is my response to the many lies and libels presented by Kozinski (See Part II) which I declined to do in 2001 because I worked for the Chief Justice and the Judicial Conference and felt I should not criticize a Judge in print. Thus, Neil Lewis of The New York Times wrote the most feckless and shoddy example of biased, one-sided writing that one could imagine – it certainly was not journalism! (See Exhibit 9) Unlike The Journal, Lewis had all the facts which were provided to him in great detail but he totally ignored them and instead turned over his front page article and a follow-up piece to propagandizing and advocating shamelessly in behalf of his long-time inside news source and good friend, Alex Kozinski. He seemed to be particularly distressed by my quotation of Kozinski's public admission that one of his law clerks had down-loaded homosexual pornography in his Court chambers. But instead of criticizing Kozinski for the homosexual pornography reference, he blamed me for quoting him.

These Kozinski assaults on me from May through September 2001 were just the beginning of his many untruthful attacks on me which have gone on intermittently for the past 7 years. As recently as a few months ago in a talk given at a California college he maliciously and falsely accused me once again of "spying on Judges" and described me by using a Jewish word, meaning "a fool" or "foolish". Thus I continue to pay the price for the failure of the Judiciary as an institution to stand up to Kozinski and to deal firmly with his multiple crimes and gross behavior over the years, particularly his 2001 felonies when he sabotaged the Judiciary's Internet Security Gateway at San Francisco. Chief Justice Rehnquist, the CAT Committee, its Chairman Judge Ed Nelson and I are among the few in the Judicial Branch who have had the courage to publicly condemn Kozinski for his crimes and his indefensible conduct which has disgraced the Judicial Branch.

**KOSINSKI SOUGHT TO UNDERMINE THE AUTHORITY OF CHIEF JUSTICE REHNQUIST AND THE JUDICIAL CONFERENCE THROUGH CONGRESSIONAL LEGISLATION**

It wasn't enough for Kozinski to have the Ninth Circuit Council cover up for his crimes and for the Executive Committee of the Judicial Conference of the United States to "capitulate" to his demands and those of Judge Schroeder all designed to ensure that

pornography could continue to be downloaded in the Courts undetected. He wanted to be absolutely certain that the Chief Justice of the United States and the Judicial Conference of the United States would be stripped of their authority to enforce Federal Criminal and Appropriation law dealing with use of computers and the internet in the Courts. Thus, he worked through his friend and local California Congressman, Howard Berman, a leader on the House Judiciary Committee, along with Berman's Committee Chief of Staff Alex French and others in the House. They drafted legislation in 2001 and 2002 that would have forbidden the Chief Justice and the Judicial Conference and the CAT Committee as well as the AO to enforce Federal statutes in the Courts concerning internet use and of course to bar any effort by them to detect illegal downloading of pornography and music in the Courts. Kozinski made some progress in the House Committee. He did this despite the fact that Judge Nelson, CAT Committee Chairman, acting on behalf of his full Committee and the Conference, (See Exhibit 10) charged that the Kozinski/Berman Bill was a clear "unconstitutional interference" by the House Committee with the internal management of the Judicial Branch. As usual that did not deter Kozinski at all in seeking to hamstring the Chief Justice and the Conference. Most Judges, if they have a policy disagreement with the Judicial Conference, work through the relevant Conference Committees to seek changes in policy by the Conference. That of course is not the Kozinski approach since he considers that he is a law unto himself and need not cooperate with or work with the Conference or the Chief Justice; so he did a secret end run to Congress.

**OVER 60% OF FEDERAL COURTS HAVE NO OPERATIONAL PLAN IN PLACE TODAY TO ASSURE THAT PORNOGRAPHY IS NOT BEING DOWNLOADED**

Fortunately, the Kozinski/Berman legislation died, in great part because there was virtually no support for it in the US Senate or for that matter among responsible leaders in the House itself. However, Kozinski essentially achieved nearly all of his objectives because the Ninth Circuit Council collaborated with him in a cover-up and the Judicial Conference Executive Committee "capitulated" to him while the Judicial Conference itself transferred effective internet control to the local Courts removing responsibility from the CAT Committee and its agent, the AO. As a result, today, nearly 60% of the Courts have no acceptable operational plan in place to enforce the law and Conference policy. Thus he and Schroeder effectively sidelined the Chief Justice, the Judicial Conference, and CAT as well as the AO on the important issue of enforcement of Federal law dealing with use of the internet and Court owned computers. Thus, in nearly two thirds of the Courts including all Courts in the Ninth Circuit Judges and staff may download pornography and illegal music with no danger of being detected. (See Exhibit 3 regrettably, AO Director James Duff ordered his staff not to provide me with reports and information after June 30, 2006.)

**JUDICIALCONFERENCE BOWED TO PRESSURE FROM ITS EXECUTIVE COMMITTEE AND NINTH CIRCUIT LEADERS AND GAVE UP IT'S ENFORCEMENT AUTHORITY OVER INTERNET AND COMPUTER ABUSE TO LOCAL COURTS**

In September, 2001, the Judicial Conference was pressured by its Executive Committee and Ninth Circuit leaders to adopt a report initiated and directed by the Executive Committee although nominally prepared by the CAT Committee. The Conference was persuaded to delegate its control and authority over assuring that the Internet and computers were used for legal purposes throughout the Court system to each local court. The Judicial Conference intended that each local Court would assure that Federal law is observed in that Court and tax-payer money not wasted and pornography no longer downloaded. That certainly was my intent and Chief Justice Rehnquist's. (See Exhibit 14) Unfortunately, this lofty aspiration appears not to have been achieved in practice. This is true even though the Conference required each Court to adopt an internet policy in compliance with Judicial Conference requirements. In addition each Court is expected to have a business practice in place to enforce that policy. In practice however, although about two thirds or more of the Courts have a policy in place, only about one third of them has a business plan in effect sufficient to enforce compliance with Federal law and Conference policy. The result is there may now be just as much waste of money and illegal abuse of computers in the Courts including the extensive down-loading of pornography as there was conclusively identified in 2001 before Kozinski and Schroeder permanently removed their two sensors that identified illegal pornography and music. Therefore, it appears that the Conference delegation of enforcement to the Courts has proved to be largely cosmetic and tokenism in most Courts.

**REQUIRED ANNUAL AO AUDITOR'S COMMENTS ON ADEQUACY OF LOCAL COURT COMPUTER LAW ENFORCEMENT APPEAR TO BE LARGELY IGNORED**

The Judicial Conference in 2001 also required that the AO examine and make periodic comments on each Court's performance. The last AO comment document that I had the privilege to see was in May, 2006, just a month before I retired. (See Exhibit 3) Generally, at that time, most courts had written policies but fully two-thirds of them had no acceptable plan in place to enforce those policies. Not unexpectedly, a particularly poor example was the Ninth Circuit. The AO auditors comment on the Ninth Circuit's performance which I received on June 30, 2006, the very day I retired, revealed that "none of the Court units have a business practice in place" to enforce their policy. This is no surprise in light of the conduct and policies over the years by Chief Judges Kozinski and Schroeder as detailed in this complaint. (See Exhibit 3)

From what I can tell, since 2006 there have been few improvements made in Court performance in enforcement of the Conference's Internet abuse policy. Although the AO Auditors comments are reportedly sent out after each examination of a Court's performance to that Court and to the relevant Circuit Council, apparently follow up improvements have seldom been made since 2001. To my knowledge, the periodic AO staff comments on Court performance have neither been requested by nor received by the AO Director James Duff or Deputy Director Jill Sayenaga. There appears to be no follow up to the annual audit comments. (Director Duff ordered his staff not to provide me with

any current data so I am forced to rely on informal information.) The CAT Committee was vigilant earlier but it was attacked in 2001 by Judges Kozinski, in particular, and also by Judge Schroeder. It was effectively sidelined that year by the Conference Executive Committee which essentially rejected CAT's policy views concerning effective enforcement of Federal criminal and civil law in Court administration of the Internet and computers. It appears likely therefore, that the downloading of pornography and illegal music in most Federal Courts or other abuses in using the Internet and computers by the Courts is likely to be as prevalent or more extensive than it was when it was revealed by the Internet band width study made under the direction of the Conference and CAT by the AO in 2001.

**NINTH CIRCUIT HAD A RESPONSIBLE LEADERSHIP PROGRAM IN 1997-1999 TO REQUIRE LEGAL USE OF COMPUTERS, UNLIKE ITS LEADERS FROM 2001 TO 2008**

Leading Judges in the Ninth Circuit earlier were concerned that Federal Judges and Court employees should obey Federal law. Therefore a study was directed by the Circuit Council in 1997 to be conducted by the Circuit staff to examine individual usage of their computers by Judges and Court staff. Filters were placed on computers throughout the Circuit to block the downloading of pornography and illegal music. Those actions were undertaken then only within the Ninth Circuit but soon after also by the Eighth and Tenth Circuits because they knew that Judges and Court employees must obey the law. These actions were not initiated by CAT or the AO but met with their approval. I understand that the Ninth Circuit and the other two Circuits took these steps to assure that Court property would not be used for criminal or other wasteful purposes.

Not surprisingly, the Ninth Circuit study in 1998 revealed massive use of Court computers within the Circuit for illegal purposes mostly to download pornography and illegal music. (See Exhibit 11) This included child pornography which was downloaded in the Ninth Circuit and is a Federal felony on its face. CAT Chairman Judge Ed Nelson identified at least 3 child pornography sites from among a brief summary of titles accessed in the Ninth Circuit. Later, I identified at least thirty on the total list. During a period of just 28 days, in 1998, the study showed that in the Ninth Circuit there were over 90,000 illegal hits on over 1,100 pornographic sites. But these shocking and sobering facts did not dissuade Kozinski in his crusade to keep undetected pornography including felonious child pornography available to the Courts. Instead, to divert attention, he falsely claimed later that CAT and the AO had taken all of these local enforcement actions which were in fact carried out only by his own Circuit Council. (See Part II) It was easier and safer for him to falsely attack faceless bureaucrats in Washington D.C. or the CAT Committee Judges than it was to attack his own judicial colleagues at home. He was successful in ending the law enforcement programs in the Ninth Circuit as well as the Eighth and Tenth Circuits in a 1999 vote of the Judicial Conference where his emotional misrepresentations were not successfully challenged. Law enforcement lost to anarchy!

**JUDGE SCHROEDER'S SPECIOUS CLAIM OF LACK OF NOTICE FOR THE  
BANDWIDTH STUDY**

Chief Judge Mary Schroeder complained in 2001 that there was not enough notice about the program to measure bandwidth utilization throughout the Judiciary. But her Circuit Executive was directly involved from the onset as was Judge Roger Strand who represented her Circuit on the CAT Committee which ordered the study. How she could make that argument therefore defies understanding because she was also a member of the ninth Circuit Council in 1998 which approved the direct Circuit examination of individual computers throughout the entire Ninth Circuit and the imposition of filters to block the downloading of pornography and illegal music. The Council notified all of the Courts in the Circuit. The Ninth Circuit took the lead in the United States and extensive notices that were sent not only to the Ninth Circuit but to every Circuit by the AO and the CAT Committees. Policy bulletins were sent to the Courts providing great detail in 1995 and again in 1997. Based upon these notices the Ninth Circuit Executive issued to all Circuit Courts a model policy on acceptable Internet use. Again in April 1998 the Circuit Executive said, while Schroeder was a member of the Circuit Council, that monitoring may occur "for security and management reasons." CAT and the AO did not require that kind of monitoring which was going on in the Ninth Circuit but only the measurement of Internet bandwidth use. Additional notices were sent out in 1999, 2000 and again by the Director of the AO in March 2001 and another bulletin was sent to the Chief Judges by the Conference Executive Committee in that same month. The Judiciary was surfeited with notice! (See Exhibit 18, pages 15-19) What was not happening prior to the study, however, was effective enforcement of Federal law except briefly in the Ninth Circuit in late 1997 and early 1998 which was then the leading Circuit that later became the worst Circuit in the United States under Schroeder and Kozinski.

**JUDGE KOZINSKI'S UNUSUAL INTEREST IN PORNOGRAPHY IN THE  
COURTS BEGAN BEFORE 1998**

Judge Kozinski began his unusual official actions to protect pornography in the Federal Courts at least as early as 1998, and probably earlier in the case of his personal pornography interests judging from The LA Times in June 2008. The Ninth Circuit report discussed above (See Exhibit 11) was submitted to the Ninth Circuit Council by Circuit staff at its meeting held on April 23, 1998. It quoted Judge Kozinski who said he was "opposed to the ongoing Ninth Circuit program to block pornographic access to pornographic sites on the internet for Judges and staff of the Ninth Circuit." His passion to assure the availability of all forms of pornography in the Courts is reflected once again on page 6 of that report which also cites his memo in which he calls for "unblocking gay, lesbian, and bi-sexual sites which are improperly restricted by the Circuit categories" then being used. (See Exhibit 11) Kozinski, and apparently some other Ninth Circuit Appeals Judges, refused to obey the Ninth Circuit's pornography blocking policies. Kozinski made it quite clear that he felt that, unlike most of his District Judge colleagues, he was above the law and could ignore it. At that time, I understand that virtually all the other Judges and Courts in the Circuit agreed to continue implementing the pornography blocking policy.

The Judicial Conference in 1999 considered the placement of anti-pornography and illegal anti-copyright music filters on all Court computers nationwide. They would be just the same as the filters already used in the Ninth, Eighth and Tenth Circuits. Even though this proposal originated with the two Conference leaders from the Ninth Circuit, Chief Judge Proctor Hug and District Judge Lloyd George, Kozinski led a massive successful misleading campaign to defeat it. Thus Kozinski and others could continue to download pornography in their Courts undetected if they chose. The Ninth, Eighth and Tenth Circuits were forced to end their anti-pornography filters because of the Conference vote successfully pushed by Kozinski. The only "privacy" involved was Kozinski's passion to protect without detection the downloading of illegal pornography in Federal Courts.

**COMPARISON OF THE INDIVIDUAL OFFENSES OF THREE RECENTLY  
IMPEACHED FEDERAL JUDGES WITH THE FELONIES JUDGE KOZINSKI  
COMMITTED**

During the 21 years that I served as Director of the AO, three Judges, sadly, were impeached by Congress upon "certification" by the Judicial Conference. They were Judges Harry Claiborne (D. NV), Walter Nixon (S.D. MISS.), and Alcee Hastings (S.D. FLA.) All three of them were convicted of crimes which were carried out largely to enrich themselves. They were of course serious crimes and they were an acute embarrassment to the Federal Judiciary. But unlike Kozinski's, their conduct did not wantonly and cavalierly endanger the nationwide internet security of all Judges, their law clerks and all Court staff and they didn't brag publicly about committing their crimes. They didn't seek to protect other Federal Judges in committing undetected crimes such as theirs as Kozinski did with pornography in the Courts. As noted above, Kozinski in May, 2001, took what the NSA expert described as "insane" action from a security standpoint. Based upon his conduct at that time and since, Kozinski assumed that he could commit the felonies with impunity and never be held accountable by his Circuit Council or anyone else for sabotaging and endangering the Judiciary's internet security system. Thus far, he has gotten away with it! Kozinski's conduct, comparatively, was far more serious and dangerous to the entire judicial system than were the isolated acts of the three impeached Judges. They knew that they would be prosecuted if discovered. In contrast, Kozinski openly bragged about his crimes (See Exhibits 7 and 9) and thought that he could get away with it even if he were to be caught. Regrettably, the Ninth Circuit Council and the Judicial Conference Executive Committee failed utterly to carry out their obvious statutory and ethical duties to sternly discipline Kozinski including to consider that he should be impeached. The Third Circuit Council can at long last remedy these failures by acting to protect the reputation of the Federal Judiciary through disciplining Kozinski by certifying his impeachment to Congress or permitting him to resign.

In the case of the impeachment of Judge Alcee Hastings, four dedicated local Federal District Judges took on the unenviable task of offering a resolution to the Eleventh Circuit Council calling for an investigation and possible impeachment of Judge

Hastings. This was not the way to win popularity with their judicial colleagues. But they did it because a Washington DC attorney, William Borders, who was accused of bribing Judge Hastings was unanimously convicted by a jury in that city. What made it particularly difficult for the District Judges was that a Florida jury had acquitted Judge Hastings of accepting bribes. After reviewing the record, particularly the conviction of the attorney for bribing Hastings, they felt in the interest of the honor, integrity and reputation of the Judicial Branch that the facts had to be considered within the Judicial Branch itself. After a complete investigation was held, with attorneys representing all interests, the Eleventh Circuit Council voted unanimously to certify the impeachment of Hastings to the Judicial Conference. Thereafter, the Judicial Conference also voted unanimously to certify Hastings impeachment to Congress where he was convicted after a House trial and was unanimously impeached by the Senate. No Judge on the Ninth Circuit Council had a similar concern about the need to protect the reputation and standing of the Judicial Branch or the courage to take similar action with respect to Judge Kozinski after his crimes were committed on May 24, 2001 even though all of the members of the Circuit Council including Chief Judge Schroeder were fully aware of Kozinski's crimes. Sadly, they apparently were also co-conspirators in the crimes and proceeded to cover them up after the fact and thus protected themselves as well as Kozinski.

Moreover, Judge Kozinski, in his Wall Street Journal op-ed piece of September 4, 2001, 90% of which consisted of lies and libel reached one moment of truth in the last sentence of his article. (See Part II) He states, "If we in the Judiciary are not vigilant in acknowledging and correcting mistakes made by those acting in our behalf we will surely lose the moral authority to pass judgment on the misconduct of others." The Ninth Circuit Council has shown no such vigilance whatever in acknowledging and correcting Kozinski's mistakes or in fact their own, and as a result they have no moral authority to pass judgment on the misconduct of others. However, the Third Circuit Council which is considering several judicial misconduct complaints against Judge Kozinski does have the opportunity to adopt the sole truth in the Kozinski essay by correcting the egregious mistakes of 2001 which were perpetuated thereafter. Otherwise you will "surely lose the moral authority to pass judgment on the misconduct of others."

**THE JUDICIAL CONFERENCE IN 1997 REQUIRED THE AO TO NOTIFY CHIEF JUDGES OF POSSIBLE ILLEGAL USE OF COURT COMPUTERS**

In 1987, many years before the Kozinski felonies were committed in 2001, the Judicial Conference and the CAT Committee ordered the AO to notify, confidentially, Chief Judges of any apparent active illegal use of computers in their Courts. The Chief Judges were then expected to take "appropriate action." That policy was reaffirmed in March 2001 by the Conference Executive Committee. It is important to know that the AO obtained only generalized information through the CAT ordered broad based bandwidth studies and most certainly did not examine of Judge's computers or e-mail. The AO could only identify the Court where the possible offenses arose but could not determine which individuals were involved or which computers were used. But the data developed did enable a Chief Judge to identify from the IP numbers such individual

computers in his or her Court. However, once again, Judge Kozinski did not allow the facts to stand in the way of his propagandist campaign. He launched a full-scale attack against the AO and particularly assailed AO Associate Director Pete Lee for faithfully carrying out Judicial Conference orders. He did not have the courage to attack the Conference, of course. (See Part II for example.) Kozinski falsely claimed that the AO was spying on Judges and threatened Pete Lee with a lawsuit and with going to jail. He blanketed the Judiciary with his usual total distortion of the facts. Even corrective letters from the CAT Committee calling attention to the gross inaccuracies in Kozinski's statements and providing all Judges with the truth didn't put out all of the fires caused by Kozinski's misrepresentations. Kozinski deliberately and knowingly confused the undeniable Constitutional independence conferred on Judges in deciding cases with a nonexistent "independence" to commit felonies and violate other Federal law without being detected. What a message that sends to Congress and the tax payers!

Chief Judge Schroeder also was sharply critical of the violation noticing procedure even though she was a member of the Judicial Conference, the body which earlier had created the policy. Therefore, when a certified letter was delivered to her by the AO in June, 2001 to her hotel in Washington DC, where she was visiting on judicial business, identifying apparent illegal use of computers in her Court, her reaction was one of hostility. (See Exhibit 8) Instead of expressing appreciation to the AO for doing its duty and obeying the Conference as well as Federal law, she complained bitterly and evidenced no concern that apparently Judges and staff were not obeying Federal criminal and civil statutes. She suggested that the delivery of a "confidential letter" to her hotel room was "carried out with the same drama worthy of a National security issue." Her reaction lends further credence to Greg Walter's opinion that some of the earlier discovered pornography was being downloaded and perhaps viewed in her own Court which may account for her unusual sensitivity.

#### **KOZINSKI'S SPECIOUS ARGUMENT THAT THE CONFERENCE AND AO VIOLATED THE ELECTRONIC COMMUNICATIONS PRIVACY ACT**

In his Wall Street Journal screed of libel and lies which appeared on September 4, 2001, (See Part II and elsewhere) Kozinski claimed that the Judicial Conference, the CAT Committee and the AO somehow violated the Electronic Communications Privacy Act by its bandwidth measuring program. He suggested that the Judiciary should appoint an independent investigator to determine whether civil or criminal violations under the Act had occurred. Rather than take such a draconian step to create a special prosecutor devoted to investigating imaginary crimes, the Executive Committee of the Judicial Conference, the Committee on Automation and Technology, (CAT) asked instead for a comprehensive analysis of any such possible legal issues that might have arisen under the Electronic Communications Privacy Act (ECPA), 18U.S. section 2410-2711. A comprehensive and detailed analysis, followed by an exhaustive opinion was presented to the Judicial Conference and CAT by William R. Burchill Jr., Associate Director and General Council of the AO. (Full opinion on file and also at the AO) Burchill concluded that "limited monitoring of Internet usage performed by the Judiciary is fully justified by its legitimate business interests and does not violate employee's reasonable expectations

of privacy. Because this monitoring does not disclose the content of electronic communications, it is not covered by ECPA. Even if that statute did apply, both the provider exception and the consent exception (her Courts have followed a long standing guidance to secure such consent) authorize the practice. Additionally, the Judiciary's practices are consistent with – indeed, less intrusive than – those common in the private sector and throughout the Federal government. For the Judiciary to ignore the increase in clearly inappropriate Internet usage would conflict with its responsibility to protect government resources and insure that government funds are spent appropriately and only in furtherance of its official mission. Therefore, we are confident that the Judiciary's current practices are entirely lawful." It is also important to know that CAT and the AO did not monitor Judges and staff computers and e-mail. Only broad bandwidth use was measured in the three secure areas, not in any Courts.

**THE FIFTH CIRCUIT LEADERS CONSIDERED BUT REJECTED KOZINSKI-  
TYPE SABOTAGE OF THE NEW ORLEANS INTERNET SECURITY  
GATEWAY**

Chief Judge Carolyn King informed the other members of the Judicial Conference Executive Committee in June 2001 that some of her Fifth Circuit Council colleagues considered copying the action just taken in San Francisco by Kozinski to sabotage the Internet Security Gateway at New Orleans. She said that Judge Grady Jolly, along with several other Circuit Judges, including Judges Edith Jones, a close ally of Kozinski's and Rhesa Barksdale, discussed this possibility. She also said that her Circuit Council met with Judge Ed Nelson, CAT Chairman and Mel Bryson of the AO. Her colleagues apparently had bought almost totally into the misrepresentations of Judge Kozinski. I talked soon after to Judge Nelson who said that he had fully informed them of the facts and gave them accurate information to counteract Kozinski's misstatements but that some Judges still remained persuaded by Kozinski's emotional distortions. However, they did not sabotage the New Orleans Gateway and thus did not join with Judges Kozinski, Schroeder and Thomas and others in defying Congress and Federal law or in the commission of felonies. In my opinion, the strong view of her colleagues likely persuaded Judge King to vote in the Executive Committee with the majority to "capitulate" to Kozinski and Schroeder. Moreover, she reported she was in regular contact with Schroeder as was the Committee Chairman, Judge Charles Haden (See Exhibit 13) during the pre "capitulation" negotiations.

**FEDERAL JUDGES ASSOCIATION LEADERS BACKED KOZINSKI DESPITE  
HIS ILLEGAL CONDUCT**

The Chairman of the Federal Judges Association (FJA) at the time was Judge Grady Jolly who was among those criticizing Judge Nelson at the Fifth Circuit Council meeting. As noted he was reportedly one of those who considered the illegal sabotaging of the New Orleans Internet Security Gateway. As FJA President, he authored a resolution presented to his Board in which he repeated to the Judges nearly all of Kozinski's emotional and distorted inaccuracies. He embraced the extremist Kozinski propaganda. He did this even though Judge Nelson had provided him with the truth and

the facts which he chose to ignore and instead fanned the flames through the use of Kozinski falsehoods and distortions. Fortunately, the FJA President-elect, Judge Lawrence Piersol, persuaded a majority of the FJA Board to take a more responsible position but it still went too far in supporting Kozinski's inaccuracies and indirectly if unintentionally his crimes. During this entire process Judge Jolly turned his back on and essentially ignored the outstanding Fifth Circuit representative on the CAT Committee, his fellow Mississippian, Judge Tom Senter. Judge Senter was an informed, dedicated and exceptionally able member of the Committee who knew the truth and the facts. He had the courage therefore to insist that Judges and Court staff were not above the law and that they must not commit felonies with impunity and not waste Federal tax-payers money as Kozinski had done, with the later endorsement of Judge Jolly.

**CHIEF JUSTICE ROBERTS STATES THAT "THE JUDICIARY CANNOT TOLERATE MISCONDUCT"**

In his 2008 year end Report to the Federal Judiciary, Chief Justice John G. Roberts Jr. said: "The Judiciary cannot tolerate misconduct. The public rightly expects the Judiciary to be fair but firm in policing its own." He then stated: "Federal Judges hold a position of public trust, and the public has a right to demand that they adhere to a demanding code of conduct. The overwhelming majority does but for those who do not, the Judiciary must take appropriate action."

Most regrettably the Ninth Circuit Council and the Conference Executive Committee majority failed to meet this high standard by failing to do anything whatever to discipline Judge Alex Kozinski in 2001, despite the fact that his felonies gravely endangered the security of the entire Judiciary. Instead the Council members were apparent co-conspirators in 2001 and abetted him in his crimes. They then united to cover them up.

Chief Justice Roberts also quoted his predecessor, Chief Justice William H. Rehnquist, citing his strong view "that the Federal Judiciary must relentlessly ensure that Federal Judges maintain the highest standards of integrity." No doubt the Third Circuit Council will embrace these laudable standards set forth by the two Chief Justices.

**KOZINSKI ARGUES FOR STRONG SWIFT ACTION AGAINST JUDGES MISCONDUCT SUCH AS HIS OWN**

Interestingly enough, even Chief Judge Alex Kozinski presumably would agree with Chief Justice Roberts policy to favor "firm" action in considering the judicial misconduct complaint of June 16, 2008 which for tactical reasons he filed against himself. This is evidenced by his passionate 39 page dissent in the judicial misconduct proceeding against Federal District Judge Manny Real (C.D. Cal) M. Real Complaint of Judicial Conduct, 4-25 F-3<sup>rd</sup> 1179 Ninth Circuit 2005. Kozinski strongly criticized the Ninth Circuit Council for not acting appropriately and energetically in a timely way to deal with Judge Real's alleged misconduct. He said that if the Circuit Council continues in effect to "side step the issue Congress would take matters out of our hands." He also

said "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 assuring that substantial allegations of misconduct are dealt with forthrightly and appropriately. This, the majority has failed to do."

Presumably Judge Kozinski, therefore, would be the first one to urge the Third Circuit Council, in considering the misconduct complaints against him, to act firmly and swiftly and to remedy the gross failure of the Ninth Circuit Council in 2001 by at long last restoring the reputation of the Federal Judiciary through addressing his serious criminal offenses of 2001 in a forthright way. In that process, based on his Judge Real case dissent, he would expect you not to be concerned about "sparing (his) feelings." Otherwise, as he said, "Congress would take matters out of (your) hands."

**JUDGE KOZINSKI'S PATTERN OF VIOLATING FEDERAL LAW WHILE  
IGNORING JUDICIAL CONFERENCE REGULATIONS AND BREACHING  
JUDICIAL ETHICS**

In addition to the felonies to which he confessed in 2001, Judge Kozinski has a consistent pattern of violating Judicial Ethics, Judicial Conference Regulations, US Marshall Security Regulations for the Courts and other Judiciary ethics and standards. There follows a list of some of his additional or possible misconduct that has been called to my attention:

1- On September 13, 2001, just two days after the terrible terrorist destruction of the Twin Towers in the City of New York where over 3000 lives were lost as well as the plane that smashed into the Pentagon and another one that crashed in Western Pennsylvania, Judge Kozinski demonstrated once again that he considers himself to be above the law by violating US Marshall and Judiciary Security Regulations. On that day, my Associate Director Pete Lee received a call from Judge John Coughenour (W.D. Wash.) reporting that Judge Kozinski along with his law clerks had come to Seattle to sit on cases. However, he publicly refused to obey the Court security regulations and the policies of the US Marshall. Following the instructions of Judge Kozinski, his two law clerks also refused to go through the magnetometers as required. However, Kozinski finally permitted them to do so but he refused to comply himself. Moreover, he did not have an official ID badge and insisted to the Marshall that a California driver's license was adequate. But the security guard said that this was insufficient under the Marshall's Regulations as agreed to by the Courts. According to Judge Coughenour: "Kozinski bullied his way past the guard." Moreover, the law clerks had a large number of boxes containing briefs of cases. Kozinski refused to permit the Marshall to inspect their contents. After some delay he finally allowed the boxes to be examined.

Upon receiving this startling information from the local Court, I immediately talked to the AO Security Officer who in turn called the Deputy Marshall in Seattle who verified all of the facts recounted by Judge Coughenour. The Marshall said that he finally allowed Kozinski to enter solely as an act of "discretion" even though Kozinski refused to go through the magnetometer or to provide a correct ID. Because of the

seriousness of the offense, however, the Marshall immediately reported Kozinski's blunt refusals and defiant behavior to his supervisor. The supervising US Marshall then went to see Judge Kozinski in the Court building and told him about the vital importance of these policies to protect the security of Judges and Courts which had been adopted both by the US Marshall Service and the Judiciary and why it was essential that everyone, even Federal Judges, follow security regulations. He told Kozinski this was even more important now in light of the September 11<sup>th</sup> terrorist attacks which had occurred just two days earlier.

2- Not long after word of Kozinski's criminal internet sabotaging violations in 2001 had spread throughout the Judicial Branch, I received a call from one of Kozinski's most senior and respected colleagues from the Ninth Circuit Court of Appeals. First, he congratulated me for standing up to Kozinski and for doing what was right for the Judicial Branch and the taxpayers. During this conversation, which occurred on October 2, 2001, he told me that his Circuit Court colleague, Judge Kozinski, "kicks people around with impunity." He also said that "he barely made it through the Senate confirmation because of the brutal treatment he had accorded many of his employees when he was Chief Judge of the Federal Claims Court." Concerning the important question of Judicial Ethics, he observed that Judge Kozinski's wife was appointed a Bankruptcy Trustee even though she had no Bankruptcy experience. He told me that Judge Kozinski was Chairman of the Ninth Circuit Committee that selected her to be a Bankruptcy Trustee which in his view was a clear violation of Judicial Ethics and probably Federal law because of Kozinski's obvious conflict of interest in appointing his own wife to the position. (See the Postal Revenue and Federal Salary Act of 1967, also called the "Bobby Kennedy Law", because it was approved in response to president Kennedy's appointment of his brother as Attorney General.) He concluded by saying that Kozinski "has no sense of public relations" as shown in part by his blatant act of nepotism.

3- As stated earlier, Judge Kozinski leveled a personal attack, coupled with threats, against AO Associate Director Clarence (Pete) Lee just for carrying out his duty required by the Judicial Conference of the United States since 1987 to notify Chief Judges of any legal violations that appear to have occurred in their Courts. The then Chief Judge of the Federal Circuit Court of Appeals, Robert Mayer, gave Judge Kozinski a copy of such an internet violations notice that he had received from the AO earlier in 2001. Mayer carefully struck out the name of the Court and asked Kozinski to keep strictly confidential the listing of the Court's accessed pornographic sites that was attached to the letter because of the potential embarrassment that might occur to his Court if they were made public. However, Kozinski obviously thinking solely to advance his own cause broke his promise and made the letter to Mayer available to the entire Judicial Conference and perhaps to other Judges. He specifically attached to the letter the forbidden list of pornographic sites accessed at the Federal Circuit which Mayer asked him to delete. Even though the name of the Court had been struck out, it was easy to identify from which Court it came. Thus Kozinski not only violated Mayer's confidence but in his zeal to groundlessly attack the Conference CAT Committee and the AO through his lack of integrity he embarrassed not only the Federal Circuit and Judge

Mayer but the entire Judicial Branch. To say that some of the titles of the accessed sites were vulgar and obscene is an understatement.

4- Judge Kozinski reportedly used his official chambers and his tax paid staff to promote his expansive nationwide campaign which was very widely publicized, to promote his successful national candidacy to be chosen as the "Number One Hottie" among Federal Judges. (See Exhibit 15) By doing so he likely violated Federal appropriation's law. To some in the media and the Judicial Branch, Judge Kozinski's foremost contribution to American Jurisprudence is likely to be the success of his campaign to be elected as the "Number One Hottie in the Judiciary."

5- He has also openly discussed with the media his Court-based Internet file of accessible jokes that he maintains and uses in his chambers. In the LA Times for August 9, 2001, Kozinski regaled a reporter by using this famous internet joke collection. The reporter said that Kozinski told a joke to the reporter in his San Francisco office by "accessing his chambers in Pasadena" where he apparently filed his jokes on line, another likely violation of law. In the Washington Times for June 13, 2008, a reporter states "His off the bench eccentricities run the gamut." He boasted to the paper that he had won a date on the Dating Game TV show. A leading Federal District Judge commented at a Judicial Conference Executive Committee meeting in August 2001 at Santa Fe that he had recently seen a UCLA Law Review article written by Judge Kozinski entitled "How I Barely Escaped Insanity." The Judge observed that he wasn't sure that he had "escaped." The other Judges weren't so sure either. No doubt there was a humorous element intended in these comments, but it occurred during a discussion of Kozinski's erratic and at times aberrant behavior as a Federal Judge. It is difficult to see how the reputation and standing of the Judicial Branch is enhanced by such strange and likely illegal behavior on the part of a Federal Judge. (See Exhibit 15) It appears that Kozinski views his position of trust as a Federal Judge as merely a big game to gratify his great ego needs and love of attention, and to show that he can defy conventional standards of behavior and get away with it. He lacks any sense of propriety or decorum or judicial temperament.

6- At a meeting of the Judicial Conference Executive Committee held on September 10, 2001, Third Circuit Chief Judge Ed Becker who, although he supported the cover-up of Kozinski's crimes, told his colleagues that Kozinski demanded that his law clerks be available to him on a 24 hours a day basis. He observed that through the 13<sup>th</sup> Amendment this amounted to slavery in violation of the U.S. Constitution. But far more seriously, it was also reported at that same Judicial Conference Executive Committee meeting in 2001 that Kozinski informed his law clerks that since he required them to be available to him 24 hours a day "they were free to download pornography and view it at the Court if that would help them satisfy their sexual needs." This report came from his law clerks to the law clerks of another Chief Judge who also served on the Executive Committee. Your investigator should contact the Chief Judge involved and the clerks in both Courts who served at that time and perhaps at other times to determine if this very serious comment is accurate and if this is a continuing policy of Kozinski's. It is known that Kozinski admitted to the New York Times in 2001 that one of his law clerks had downloaded pornography in his chambers. But how many of his law clerks

over the years accepted Kozinski's reported offer to illegally download and view pornography in his chambers? I have no first hand information. But your investigator may wish to contact the Chief Judge involved and the clerks in both Courts who served at least at that time to determine if this serious charge is accurate.

7- At the time of Judge Kozinski's nomination in 1985 to serve on the Ninth Circuit, Representative Robert Kastenmeier, Chairman of the House Judiciary Subcommittee and his Chief of Staff, Mike Remington, reported that a whistle-blower had told them that Federal Claims Court "furniture and equipment" and perhaps other properties had been illegally converted to their personal use by Judge Kozinski and his family. Kozinski was Chief Judge at that time. A study was undertaken. I do not have a copy of the study. But your investigator may wish to talk to former Chairman Kastenmeier and Mike Remington to determine what the study revealed. Thereafter, Kozinski was confirmed to the Ninth Circuit by the US Senate which could mean either that there was insufficient evidence to support the whistle blower's charges or that the Senate Judiciary Committee was not informed.

8- There were persistent reports after the Kozinski felonies committed on May 24, 2001, that he had persuaded or compelled one or more technical experts in the employ of the Ninth Circuit Court of Appeals to completely wire his house at no cost to install computers and other related equipment. These reports were conveyed by Ninth Circuit staff to AO staff. I have no first hand information but your investigator may wish to clear the air on this matter which is somewhat similar to the charges recently litigated against Senator Ted Stevens of Alaska.

#### **NO STATUTE OF LIMITATIONS TO BAR IMPEACHMENT OR DISCIPLINE OF KOZINSKI FOR HIS 2001 CRIMES**

There is no statute of limitations to bar the Third Circuit Special Council from taking the requisite disciplinary action against Judge Kozinski for his 2001 felonious sabotage of the Judiciary's Internet Security Gateway in San Francisco. To the contrary, failing to do so would give credence to the often heard criticisms of Federal Judges that they will not discipline their own because there is a "good-old-boy and girl" network through which Judges protect and cover-up for themselves. Some of the critics include in the academic community among others, Professor Stephen Burbank, as well as several key members of the Congressional Judiciary Committees.

In a Bloomberg News article for October 1, 2008 under the title "Judge Kozinski Accused of Ethics Breach by a Lawyer" the noted Professor and expert on Federal Judicial ethics, Professor Arthur Hellman is quoted: "If Judge Kozinski did the things that Mecham accuses him of doing that certainly sounds like misconduct." Hellman said "If not, then it is important to clear his name."

### JUSTICE STEVEN BREYER COMMITTEE ON JUDICIAL DISCIPLINE

Early in the three years prior to the completion of his highly distinguished service as Chief Justice and his death, several key members of Congress complained to Chief Justice Rehnquist and the Judicial Conference that the Judicial Branch was doing a poor job in implementing The Judicial Conduct and Disability Act of 1980, in particular citing alleged failures by Circuit Councils. The Act permits and encourages Federal Judges to police themselves, and when necessary, to discipline those of their members who do not live up to the high standards of legal and ethical behavior expected of them. Indeed, the Chairman of the House Judiciary Committee, at that time, Representative James Sensenbrenner, spoke vigorously before the Judicial Conference listing what he considered to be several serious failures by Circuit Councils to deal with alleged Judicial misconduct by Federal Judges. He felt Judges had violated ethical and legal standards and were not disciplined. He and other members of Congress threatened to impose an independent "Inspector General" on the Judiciary if the Judges failed to do a better job of policing themselves.

Because of the seriousness of these charges, I urged Chief Justice Rehnquist to meet with Chairman Sensenbrenner to discuss his concerns. As an outgrowth of that meeting and with the recent Kozinski crimes in mind, the Chief Justice commissioned a special Committee Chaired by his Supreme Court colleague, Associate Justice Steven Breyer, to study the implementation of The Judicial Conduct and Disability Act of 1980 particularly by the Circuit Councils which have specific responsibilities under that statute. The Breyer Study Committee filed its report in 2006. The Judicial Conference in 2007 approved 8 of its 12 recommendations by adopting stricter rules to govern Circuit Councils and the Judiciary in implementing the 1980 Act. Other recommendations were approved by the Conference in 2008. The Breyer Committee found, as Chief Justice Roberts stated: "there remains room for improvement ... although the Study Committee found that overall the Judiciary does an excellent job of handling complaints against Judges." The complaints against Kozinski represent the first test of the adequacy of the new Rules.

I have verified that for some inexplicable reason, though it was very much on the mind of Chief Justice Rehnquist, the attention of the Breyer Committee was not called to the admitted commission in 2001 of several felonies and misdemeanors by Judge Alex Kozinski, followed by the total failure to discipline him by the Ninth Circuit Council. This is easily the worst such failure that I knew of during my 21 year service as AO Director. Knowledge of the outrageous criminal behavior of Kozinski preceded by the vote of the Ninth Circuit Council to approve his crimes in advance thus making them apparent criminal co-conspirators who then proceeded to cover up these crimes rather than to obey the 1980 Act would certainly have compelled the Breyer Committee members to cite this egregious example in its report to support its proposed Rules reform for the Federal Judiciary to govern Circuit Councils in handling Judicial misconduct complaints.

The Breyer Committee in its very first "Principal Finding" on page 107 concluded that "Circuit Chief Judges" in some notable instances evidence a "reluctance to use their authority to identify complaints in order to provide public resolution of public allegations of judicial misconduct cognizable under the Act." The Committee observes that through such a failure "legislative and public confidence in the Act's administration is jeopardized..." Most unfortunately the Kozinski Internet Gateway felonies case represents the classic example of the total failure by a Circuit Chief, Judge Schroeder, to exercise her statutory authority and duty by refusing to take much deserved action to discipline Kozinski. Of course as a criminal co-conspirator, along with her Council, it is no surprise. The Breyer Committee finds on page 108 that in "17 complaints that attracted national or regional press attention in fiscal years 2001 to 2005" five of the complaint terminations were problematic. One such failure was presided over by Chief Judge Mary Schroeder of the Ninth Circuit (in addition to the Kozinski case.) "Of these five, four resulted from the inadequacy of the Chief Judge's limited inquiry or failure to appoint a special Committee." In the Kozinski case, Schroeder refused to file a judicial misconduct complaint even though she knew he had committed felonies and violated Judicial Conference policy. Obviously, there was no inquiry held by her at all and certainly she did not appoint a special committee.

### **CHIEF JUSTICE ROBERTS ACTS TO RESTORE THE JUDICIARY'S REPUTATION**

Fortunately, Chief Justice Roberts appointed the Third Circuit Disciplinary Council to consider all pending and any new complaints that may be filed against Judge Kozinski. This Council has the opportunity and duty to take the necessary, if belated, disciplinary action against Kozinski including the adoption of a possible impeachment resolution. Such action is required to restore the Federal Judiciary's reputation with Congress, the Bar, academe, the media and the public. If not done, the threat by key leaders of Congress to impose an Inspector General upon the Judiciary to police Federal Judges is likely to be revived and enacted. Moreover, the creation of a Commission, outside the Judiciary, to discipline Federal Judges already is under discussion. As Kozinski himself said in his dissent in the Real case: "Congress will take matters out of the (Courts) hands." Moreover, other Judges and perhaps Court staff could use any free pass given to Kozinski by Schroeder and her Council to defy the Chief Justice and the Judicial Conference and violate Federal Criminal law, as an open invitation to commit similar crimes.

To repeat Chief Justice Roberts ringing declaration: "The Judiciary cannot tolerate misconduct. The public rightly expects the Judiciary to be fair but firm in policing its own." Chief Justice Roberts has had two opportunities recently to demonstrate his personal commitment to upholding the integrity of the Judiciary through full and prompt enforcement of the 1980 Act. First, on June 16, 2008, the very day he received the message from the Ninth Circuit asking that he appoint some other Circuit Council to consider disciplinary complaints against Judge Kozinski, he immediately sent an appointment letter to the Third Circuit Chief Judge Anthony Scirica, as stated earlier. He appointed him to Chair a special Third Circuit Committee Council along with four

other Judges and gave them broad jurisdiction to consider not only the June 16, 2008 misconduct complaint against Kozinski filed in the Ninth Circuit but also to consolidate other pending complaints against Kozinski while receiving any new ones that might be filed such as this one covering his 2001 crimes. Then, also in June 2008, Chief Justice Roberts clearly chose not to delay until the next regular session of the Judicial Conference to be held in September consideration of a very serious disciplinary referral from the Fifth Circuit Council concerning various instances of alleged misconduct by District Judge G. Thomas Porteous' Jr. (E.D. Louisiana) In order to avoid having the matter fester in the public arena from June until September, he called a special teleconference session of the Judicial Conference in June over which he presided. After careful deliberation, the Conference voted unanimously to certify to the House of Representatives "that consideration of impeachment of Judge Porteous may be warranted." Chief Justice Roberts has set an enlightened example which should be followed by the Third Circuit Council. Similar action should be taken against Judge Kozinski by the Third Circuit Council.

**ACTIONS PROPOSED TO IMPEACH OR SEVERELY DISCIPLINE JUDGES  
KOZINSKI, THOMAS AND SCHROEDER**

As an admitted violator of Federal, criminal, and appropriations law and the Judicial Codes of Conduct who illegally entered the vital Internet Security Gateway, seized, sabotaged and destroyed the security system for Judges all over the country without giving them any notice and then boasted about his crimes in the media and recreated them on film and who has now been exposed as a pornographer in his own home on a publicly accessible website Judge Kozinski should be impeached or permitted to resign. Judge Sidney Thomas who is a reported accomplice of Kozinski's who participated in the illegal entry of the Internet Security Gateway, who aided and abetted him as an accomplice in all of the crimes, who voted in advance to approve his crimes including his own, and then participate in the cover-up of those crimes, also should be considered for impeachment or resignation. Chief Judge Mary Schroeder took the lead in her Circuit Council to approve the Kozinski crimes in advance thus making her a criminal co-conspirator in the crimes and then was a co-leader with Kozinski in their campaign of misrepresentation throughout the Judicial Branch, (particularly with the Executive Committee and the Judicial Conference) to cover up the crimes also should be considered for impeachment or at a minimum sternly disciplined.

**DISCIPLINE PROPOSED FOR THE OTHER MEMBERS OF THE 2001 NINTH  
CIRCUIT COUNCIL**

All of the other members of the Ninth Circuit Council in 2001 apparently were co-conspirators with Kozinski in the commission of his crimes through their votes to approve them in advance. They then went along with the cover up and refused to take any disciplinary action against Kozinski. They should be sternly disciplined. I do not recommend impeachment in part because I allow for the possibility that Kozinski, Schroeder and Thomas did not explain fully to them the implications of the vote that they were taking although they should have known. Moreover, given Kozinski's reputation

for bravado, brashness, bluff and brazen arguments, I can conceive that they could have been intimidated or swept up by his emotional, even if completely false, arguments. As Federal Judges, however, who litigate complaints on which there are always two or more sides, it is incongruous for them apparently to have considered only the extremist views of Kozinski and possibly those of Schroeder. Their failure to go behind and question Kozinski's fallacious reasoning and false versions of events is particularly disturbing in light of his well known reputation for the dramatic, for shock and exaggeration, coupled with his infamous aberrant personal behavior. Some form of lesser discipline should be applied to them.

#### **DISCIPLINE OF CIRCUIT EXECUTIVE GREG WALTERS**

It is not clear to me that you have jurisdiction over the then Ninth Circuit Executive Greg Walters under the 1980 Act which apparently applies only to Judges. However, given his deep personal involvement in the commission of the crimes and in the cover up, you should make a disciplinary recommendation to Chief Justice Roberts whose appointees, the AO Director and Deputy Director awarded him with a major management position at the AO despite his active enabling and participation in the Kozinski crimes. This suggestion is particularly pertinent since he is still on the payroll of the Bankruptcy Court for the Northern District for San Francisco but is actually working for Jill Sayenga, the Deputy Director of the AO. First of all, he broke his trust and violated his solemn agreement with the Judicial Conference, CAT and the AO by illegally permitting Kozinski and Thomas to enter the secure Internet Gateway which is under the total control of the AO by delegation from the Judicial Conference and CAT. Judging from the record of Kozinski's public boasting about how he committed his crimes; (See Exhibit 7 for example) Walters must have identified the sensors which had to be turned off to achieve the criminal objectives of Kozinski, Thomas and Schroeder. Moreover, he participated aggressively in the Schroeder campaign to mislead the Executive Committee and the Judiciary in an effort to cover up the crimes committed at the Gateway. He told me and others that Kozinski threatened to have him fired in mid 1998 even though he followed the orders of the Ninth Circuit leaders when he applied the computer filters in the Ninth Circuit to block the downloading of pornography and illegal music on computers. Kozinski offered a motion to fire him which was rejected by the Circuit Council under Chief Judge Hug who had directed Walters to undertake these law enforcement actions. Kozinski then told Walters again that he would fire him as soon as he became Chief Judge. It is quite likely therefore, that Walters may have been threatened, coerced, and intimidated by Kozinski into taking his illegal actions on May 24, 2001, to permit the criminal entry of Kozinski and Thomas into the secure Internet Gateway. But that does not explain his zeal later in assisting Chief Judge Schroeder in their cover up efforts since most of these arguments proved to be false or inaccurate. Apparently, Judge Schroeder and others may have had some sympathy for Walters since she permitted him to be placed on the payroll of the Northern District of California Bankruptcy Court just before Kozinski took over as Chief Judge. (Does that Court have a surplus of funds?) Perhaps he deserved such an act of mercy. However, it is completely unsupportable for him to work at the AO which he attacked with such regularity and he violated his solemn agreement with that agency and CAT to maintain the security of the

Gateway. Perhaps the new AO Deputy Director Jill Sayenega who was his fellow Circuit Executive, in her case for the DC Circuit, may have felt sorry for him and desired to help a former colleague. However, to provide a haven to a known violator of Federal law who broke his contractual obligations to the AO is not only poor judgment but it is improper and discredits the AO. Walters should not have been given a position at the AO even on loan. Personal loyalty does not outweigh impropriety!