Patterico's Pontifications

Harangues that Just Make Sense

Los Angeles Dog Trainer
PATTERICO!
Public Enemy #1

6/17/2008

CYRUS SANAI RESPONDS

Filed under: Dog Trainer,General,Kozinski — Patterico @ 7:03 am

Cyrus Sanai, who tipped news organizations to controversial files on Judge Alex Kozinski's "alex.kozinski.com," has sent me the following statement. He was the subject of charges by Alex Kozinski's wife, and while it's clear to me that he is an extremely unpopular figure on the Internet, I think it's fair that he be given a chance to respond and set out his views. I have some comments and links following the statement, including one that indicates that Sanai's complaints against Judge Kozinski constitute part of a "litigation strategy" with respect to a Washington divorce case.

Click on "more" to read the statement.

> I am the attorney who tipped the Los Angeles Times onto the pornography and mp3 distributing website of the Presiding Judge of the Ninth Circuit Court of Appeals, Alex Kozinski. The news stories have portrayed me as a Beverly Hills attorney with a "grudge", a "stalker", and various other names. However, my issue with Kozinski is a small part of a much larger struggle being waged against the federal court's perpetration and protection of judicial corruption in the state and federal benches sitting in Washington State, Nevada, and Arizona.
>
> The corruption I have personally witnessed occurred in Everett, a suburb of Seattle, Washington. After my mother, myself and my siblings obtained a protective order based on sworn allegations of spousal abuse which kicked my father out of the house, we sided with my mother in the divorce. While my mother employed a gentlemanly lawyer, my father had the smarts to hire a part-time judge (in Washington, unlike every other state, a lawyer can simultaneously be a judge and practice before the same court). After a trial before Washington state judge Joseph Thibodeau, he appointed Philip Maxeiner, who is both my father's witness and accountant, as a judicial referee with the power to decide multiple key issues and carry out several critical matters that were the province of the state court.
>
> Appointment of a litigant's employee or servant as a judicial referee is, for due process purposes, no different than allowing that litigant to wield the gavel, a kind of judicial bribery by proxy. Though nominally against state law, the Washington courts refuse to address any due process arguments raised against its corruption. (Washington's judges grub for campaign contributions in open judicial elections). The Washington courts are also notable for their history of disqualifying and then seeking to silence any Washington state attorney who blows the whistle on judicial corruption.
>
> Judicial bribery is nothing new, and the venerable Civil Rights Act of 1871- the same civil rights statute used to combat unconstitutional state laws, police brutality, and discriminatory state conduct-has long allowed litigants a direct pathway to injunctions against judicial malfeasance. While case law doctrine called Younger abstention restricts federal courts from directly intervening in ongoing state proceedings, this is subject to the extraordinary circumstances exception when the state tribunal lacks or appears to lack impartiality. The Ninth Circuit Court of Appeals has nonetheless ensured that the Civil Rights Act is ineffective against the corrupt appointment of special purpose judicial officers, and similar forms of black-robed malfeasance. The reason? Federal judges have imported these corrupt practices into the federal bench.
>
> Two years ago two reporters from the Los Angeles Times profiled Nevada state and federal judges regularly deciding cases involving friends and business partners. They also exposed judges appointing cronies as special judicial officers such as receivers, who wield much of the powers of a judge and must be compensated by the parties to the litigation.

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The disparate responses of the state and federal judiciary to this expose were dramatic. The Nevada Supreme Court instituted several important reforms, and appointed a commission to study its judicial practices. Anyone still holding their breath in expectation of similar action from the Ninth Circuit's Judicial Council, responsible for judicial ethics and discipline for federal judges in Nevada, California and seven other Western states, should probably think about exhaling. Despite the filing of a judicial discipline complaint[] against federal judge James Mahan, the Ninth Circuit issued a white-wash exoneration of him. This matches my personal experience: the Ninth Circuit Judicial Council and Court of Appeals have a consistent policy of not only ignoring challenges to the corrupt appointment of receivers and other sorts of special purpose judicial officers, but of directly punishing any private litigant who challenges such corruption in state or federal court.

The Ninth Circuit is not about to condemn state courts for lucrative wrongdoing in which its judges are embroiled; indeed, Judge Kozinski, has repeatedly advocated tossing out current judicial ethics law in favor of just "trust the judges".

The Ninth Circuit has fended off challenges due process challenges to these practices in three ways. The first is allowing federal judges to bar litigants from employing state or federal actions to challenge judicial corruption, and making such orders non-appealable and unchallengeable. In my case, my mother, myself and my siblings were directly barred from "interfering" with Maxeiner by a federal Judge, Thomas Zilly, and the Ninth Circuit refused to allow any direct or indirect appeal from his ruling or subsequent imposition of hundreds of thousand of dollars of sanctions for challenging Maxeiner's appointment. This policy of barring appeals from such rulings is illegal under Supreme Court precedent, but because the Ninth Circuit makes these ruling[s] through cryptic unpublished decisions and one-sentence dismissal orders, a clear challenge can never be framed for consideration by the United States Supreme Court.

The second means, closely related to the first, is the Ninth Circuit's policy of making most of its rulings unpublished. Any invocation of the Civil Rights Act and exceptional circumstances is simply ignored by trial court judges and the Court of Appeal in postcard sized rulings. Again, this is what happened to me; the special circumstances exception was ignored in the first set of appeals I filed, and have likewise been ignored in ongoing appeals of a dismissed collateral attack on the efforts of the Washington State Supreme Court to disbar my brother, a full-time prosecutor in Oregon, due to his efforts to challenge the corrupt appointment of Maxeiner in various courts.

For those litigants and lawyers who do not quietly accept the secret ash-canning of their challenges to corrupt appointments for judicial receivers and referees, the Ninth Circuit reserves its special punishment: intimidation. In my case, this was carried out by Judge Kozinski. He published an article directly attacking me and discussing the merits of my case in the San Francisco Recorder in 2005, while the appeals where ongoing. He also put case-related materials on a web page devoted to my case within the domain "alex.kozinski.com," and linked the page to the on-line version of the article. That a sitting federal appellate court judge would publicly violate the federal canons of judicial ethics demonstrates how fiercely the Ninth Circuit ensures that constitutionally indefensible corruption remains practically invulnerable. See Canon 3(A)(6) of the Code of Conduct for United States Judges ("a judge should avoid public comment on the merits of a pending or impending action.") His wife is now carrying on this campaign; she not only talks about the case at issue, but dredges up unrelated litigation where a ju[dge] who criticized me was reversed and booted from the case by the California Court of Appeal's Second District.

Fourteen months after I filed a judicial misconduct complaint against Kozinski—both public commentary on a pending case and inclusion of being directly against the judicial ethics rules—he supposedly issued a grudging apology to forestall an investigation (I've never received it). The December 2006 order resolving my complaint also found "no posting of complainant's case-related information on any website maintained by the judge."

When I received that decision, I was dumbstruck, as thirteen months previously I had walked a Ninth Circuit staff member investigating my complaint to finding the link. However, Judge Kozinski had temporarily taken down alex.kozinski.com, and Google and other search engines had purged most signs of its existence.

Three months or so after my complaint was terminated, the alex.kozinski.com site went

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Frequently Unasked Questions (FUQs)

Contributor:
Hot Air
Big Journalism

What They're Saying

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Highlights from the first ten years of Patterico

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> up. Kozinski put the same article on the /articles/ directory, links to which could be found in, among other places, his Wikipedia entry. I filed a second complaint in November of last year, which states, inter alia, (a) here is the site that supposedly could not be found, and (b) if Judge Kozinski admits he should not have written the article, it is misconduct to further distribute it. It's still pending before Judge Schroeder.
>
> A month later, I enter[e]d alex.kozinski.com into Google to see what else he might be doing with the site, and found links on Russian free mp3 sites to illegal mp3 files of copyrighted songs. I also found the collection of juvenile humor, ribald jokes, bizarre pictures and rated X porn that got Kozinski into hot water.
>
> The mp3 files that Kozinski put on his website for sharing were obvious judicial misconduct; the porn, somewhat debatable. But it is not my real issue with him. My problem him and his colleagues is that they not only ignore judicial misconduct and corruption within the federal courts, but they foster and protect its existence in the courts of Washington State and certain other states.
>
> There are three institutions that could put a halt to this. One might think the US Supreme Court would be the obvious place to turn, but its policy is only to accept cases to state what the law is, and not address misapplications of the law by the Courts of Appeals, even where such misapplications are repeated over and over. Due, ironically enough, to criticism by Judge Kozinski of the Ninth Circuit's mishandling of the investigation of the Ninth Circuit's most notorious judge, Manuel Real, the Judicial Conference pushed through rules that give it the final review of all judicial misconduct decisions. However, the Conference has been highly deferential to the Ninth Circuit to date.
>
> This leaves Congress to set the Ninth Circuit straight. The Ninth Circuit's refusal to deal with corruption as practiced by federal judges like Mahan, its intimidation and punishment of litigants and lawyers who challenge such misconduct of state or federal judges, and its refusal to apply civil rights law or its own judicial conduct rules to corrupt appointments of judicial referees, receivers and the like, easily merit Congressional investigation and intervention. Representative Sensenbrenner has proposed creating an inspector general for the federal judiciary; transferring the Ninth Circuit judicial misconduct investigation power to an inspector general for a few years would give this idea a deserved trial run. Congress should clarify civil rights law to allow separate review of all judicial decisions where a judge or an appointee has a financial interest in a case. Congress should also require a federal court to vacate state court rulings and impose damages and attorneys fees on state court judges and their appointees who have a business, employment, or financial relationship with a litigant in a case before the judge or appointed judicial officer. More cries of "trust the judges" will rise from the judicial branch, but it is no less prone to corruption and misconduct than the other two branches, and deserves no immunity from the constitutional system of checks and balances that guard against misconduct and corruption.

A few notes.

I don't believe that Judge Kozinski or his wife wish to comment on this matter further, but I have sent them the link to this post and asked them for comment, out of fairness.

I'll note this: Sanai speaks of "[t]he mp3 files that Kozinski put on his website for sharing," but I don't believe that he has proven that Judge Kozinski put them on the server for that purpose.

I understand why Mr. Sanai says that "Judge Kozinski, has repeatedly advocated tossing out current judicial ethics law in favor of just 'trust the judges'" — but I think that's a rather uncharitable characterization of a more subtle and effective argument by Judge Kozinski, which you can read **here**. In that article, Judge Kozinski argues that the real test of judicial ethics lies not in the canons, but in what goes on in chambers when nobody is looking. It's a well-argued piece and I commend it to you.

As to the "unrelated litigation where a ju[dge] who criticized me was reversed and booted from the case by the California Court of Appeal's Second District" — here are two appellate decisions that Sanai sent me from that case: **here** and **here**.

Sanai says that Kozinski "supposedly issued a grudging apology to forestall an investigation." You can read the order for yourself **here**, and see what it says about the nature of Judge Kozinski's apology. I

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read the order as suggesting that there *may have* been an improper comment on a pending case, but it didn't affect the case and therefore did not rise to the level of misconduct. Nevertheless, Kozinski perceived a possible appearance of impropriety and accordingly apologized. But read it yourself and make your own call.

I specifically asked Sanai to respond to **Judge Zilly's sanctions order**, which has been quoted on **Overlawyered.com**, and which contains language that seems very damning:

> Plaintiffs' conduct in this litigation has been an indescribable abuse of the legal process, unlike anything this Judge has experienced in more than 17 years on the bench and 26 years in private practice: outrageous, disrespectful, and in bad faith.

And it goes on like that.

Mr. Sanai sent me the draft of a combined brief which he said responds to Zilly's order. If you're interested, you can read it **here**.

Finally, one of the more interesting links I have run across is a comment that Sanai left at Lawrence Lessig's blog. You can read the entire comment **here**, but here is the passage I found interesting:

> As for attorney ethics (very different from judicial ethics or normal human ethics), once Kozinski inserted himself into my litigation inappropriately, it's my duty and right to undo the negative consequences and turn the situation to my litigation advantage. That's what good lawyers do: take lemons handed out by judges and turn them into sweet lemonade.
>
> I've achieved my first litigation objective, as Chief Justice of the United States Roberts has appointed an investigative committtee from the Third Circuit. I have two more to accomplish from this, though I'll them under my hat for now. However, I will see that seeing Judge Kozinski humiliated, as he has been, was never my goal. I was a big fan of his before he decided to use me as a pinata.
>
> Cyrus Sanai

I asked Mr. Sanai to elaborate on why he sees an investigation of Judge Kozinski as the first part of a series of litigation objectives. He told me this:

> It is part of a litigation strategy. Revenge don't pay the bills. I will say that the first element was accomplished by the appointment of an investigative committee from outside the Ninth Circuit. I don't want to say any more than that as I might wa[i]ve work-product privilege.

In a subsequent e-mail he added:

> There is no upside to attacking a judge through misconduct proceedings. You get nothing but vilification and efforts by the judge's friends and relatives for payback. However, in my case I'm not doing it for upside, but to rectify the litigation disaster that occurred in Seattle. Since it was caused by efforts to protect lucrative judicial misconduct, I have to take that bull by the horns.

I thank Mr. Sanai for his responses.

Comments (97)

97 RESPONSES TO "CYRUS SANAI RESPONDS"

1. My post on Lessig should have come out in relevant part as follows:

   However, I will say that seeing Judge Kozinski humiliated, as he has been, was never my goal. I was a big fan of his before he decided to use me as a pinata.

   Keeping up with the torrent of sock puppet attacks, combined with the more serious issues raised by people like Prof. Lessig, does no favors to my proofread abilities.

   That being said, I'm going to be reducing my appearances in these blogs now that the committee has been appointed. I never went into this with any expectation other than that I would be verbally beaten by anonymous cowards. My goal is justice and that is not handed out by the mob.

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No on 66
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Unfortunately, obtaining justice in this area required me to get sufficient public attention to the conduct of Judges Kozinski, Thibodeau, Zilly, etc. That's because these cases previously were adjudicated through the unpublished opinion process (the subject of my 2005 article that set off Judge Kozinski).

Cyrus Sanai (4df861) — 6/17/2008 @ 7:13 am

2. The problem that Judge Kozinski has, of course, is that in addition to the unsavory appearances of his "humor" collection, he had on his site copyrighted material that was indexed by file-sharing sites. Under Kozinski's own published views that is contributory infringement even if he was not aware of them (see Perfect 10). He also has Ralph Mecham accusing him of committing a felony. Finally, he has left a trail of dishonest statements when attacking Mecham, dealing with my misconduct complaint, and now attempting damage control through his son and wife.

   Cyrus Sanai (4df861) — 6/17/2008 @ 7:17 am

3. You have to agree, Patterico (and you too daleyrocks) that regardless of who the real **Philistine** is, it is a David vs. Goliath story. And David has scored a hit right between the eyes. Whether he gets to cut off Goliath's head with Goliath's own sword is to be seen.

   nk (4bb2be) — 6/17/2008 @ 7:18 am

4. FATWA

   daleyrocks (d9ec17) — 6/17/2008 @ 7:21 am

5. The problem that I have, is that if successful, I will be cutting off one of the primary methods by which certain judges, attorney/judges, and business partners of judges in Washington State's federal and state bench obtain easy money: by engineering the appointment of employees of a private litigant or the business partner of a judge into the position of a receiver, special master, judicial referee, etc. That will make me and my family a target for years to come. However, it was something me and my siblings had to do to save our Mother.

   Cyrus Sanai

   Cyrus Sanai (4df861) — 6/17/2008 @ 7:22 am

6. daleyrocks # 4,

   ? I could not find that acronym on Google.

   nk (4bb2be) — 6/17/2008 @ 7:25 am

7. [Idiot racist threatening comment deleted. I'll ban the commenter. — P]

   Scott Frieh (056e1d) — 6/17/2008 @ 7:26 am

8. Even if you are only being sarcastic, **Frieh** ….

   nk (4bb2be) — 6/17/2008 @ 7:46 am

9. o-O

   Wow… That was… Interesting…

   Scott Jacobs (fa5e57) — 6/17/2008 @ 7:47 am

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10. Am I missing something here? As I understand it, Mr. Sanai had extensive litigation in the courts in Washington state, in which he believes he was treated improperly and not accorded due process because of a variety of ethical issues which, he says, are intertwined with the practice of judging in that state.

    After having lost an attempt to get the federal courts to intervene in his family-law case (before a 3 judge panel which did not include Judge Kozinski), Mr. Sanai publicly criticized the circuit, claiming it routinely ignored its own and Supreme Court precedents in a rather obscure area of legal doctrine (applicable to his case), and publicly challenging the full court to grant *en banc* rehearing to the next case crossing its desk dealing with the issue… while his application for *en banc* review on the family law case was pending, without disclosing his personal interest in having *en banc* review of that issue. Judge Kozinski, though not on the panel that heard Mr. Sanai's losing case, wrote and had published a column responding to Mr. Sanai's allegations about the 9th Circuit, in which he revealed public-record facts about Mr. Sanai's litigation history.

    And so now Mr. Sanai has embarked on an intensive, highly planned effort to discredit Judge Kozinski, and not the supposedly biased state court judges in Washington or any judge who has ever actually ruled against him in any case?

    To avoid any libel or slander claims, I'm not going to characterize or express any opinion on Mr. Sanai or his chosen tactics. But somebody please correct me if I've misunderstood this somehow.

    PatHMV (653160) — 6/17/2008 @ 8:05 am

11. cyrus, you promised to dial down your blog appearances in comment #1, but have since made two more comments. how can we miss you if you won't go away?

    scott frieh, thank you for revealing, however unwittingly, the true motivation of (quite) a few of judge kozinski's critics. now we'll see if patterico leaves your classy comment up. i'm betting no, any takers?

    assistant devil's advocate (8479c3) — 6/17/2008 @ 8:10 am

12. Cyrus – Is Maxeiner the same person you have referred to as your father's accountant in other threads? It certainly sounds like it. What exactly are your damages? To save time, I'll copy one of my comments from another thread here.

    Cyrus – In the matter of your mother's divorce you keep raising the issue of the court appointing your father's "accountant or servant" as a special master or referree as something that particularly chaps your ass. Now correct me if I'm wrong, but didn't the court order an equal division of marital property except for an investment account of your mothers and two parcels of land which it awarded to your father? Your mother, brother and you engaged in a series of ridiculous actions (lis pedens, etc.) to frustrate the sale of the land parcels. What was the reason for that? Doesn't the special master or whatever you want to call him also have to provide an accounting to the court where both parties have an opportunity to review both receipts and disbursements? I guess what I am asking is isn't the special master issue a giant fucking red herring just to delay matters further?

    daleyrocks (d9ec17) — 6/17/2008 @ 8:12 am

13. PatHMV —

    I suspect Patterico, for his own protection as much as everything else, is carefully logging the IP address and other characteristics (browser/os/etc) of the messages purporting to originate with Sanai.

    Some of the statements attributed to Sanai with respect to his motivation and intent here are noteworthy (if not cringe worthy).

    I will say that it is plain that he has an agenda, and he as admirably admitted that as being the case.

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« May Jul »

Favorite Sites

A Million Monkeys Typing
Ace of Spades
Acute Politics
Alarming News
Anwyn's Notes in the Margin
Badgers Forward
Beldar Blog
Best of the Web
Betsy's Page
Big Lizards
BizzyBlog
Blackfive

The biggest black eye here is for the L.A. Times, which exaggerated by way of hyperbole the content of the directory, and did not disclose the motivation of its source. Even if not identifying Sanai by name, it would have been appropriate to note he is a disgruntled litigant.

Gonzo (aec2cd) — 6/17/2008 @ 8:13 am

14. Patterico, another thanks for exceptional presentation in all of these related posts. Leaving it to “us” to form opinions and providing a wealth of information with which to do so, I sincerely appreciate.

    This entire cadre of positions leaves me with a distaste. I find the comments/correspondence of both Tiffany and Sanai to have their plausable points. Yet both sides, both Kozinski and Sanai, obviously have their distinct shadows and thorns.

    Regardless that what I chose to view of the files provided by Sanai I found to have been significantly exaggerated by the LA Times, DRJ summed it up well for me in your poll post that the files found on Kozinski’s server were “More offensive than what I expect a federal judge would post on a public (or family) website.” Indeed.

    Unfortunately, judges at any level can be just as stupid as the rest of us and undoubtedly Kozinski regrets his stupidity of thinking anything made available on the internet could ever be construed as “private,” however benign some of us may find it. Had he not made these files available, all of these posts and Sanai’s use of said files would never have come into play. The jury would remain seated, no newspaper could have used this information and twist same for their own means, no investigation would have ensued, no recusal would have been placed.

    Today, we all live in glass houses. I excuse neither Kozinski for his stupidity, nor Sanai for his past sanctions. To each, I would offer a lesson I have drilled into my two sons: In time, people will not remember WHY they did not trust you, but they will not forget THAT they don’t trust you.

    It will be interesting to me to see how the Pandora’s Boxes opened willingly by each party play out over time.

    EHeavenlyGads (f29174) — 6/17/2008 @ 8:34 am

15. It has been amazing to watch the transformation of Cyrus Sanai from disgruntled scorched earth litigant with a grudge to tireless judicial crusader over the past six days as he has ceaselessly commented in various legal blogs attempting to shape a public persona.

    It must not be easy to be Cyrus Sanai and now he is letting us know what a big debt of gratitude we owe him for voluntarily becoming a public pariah. He was doing it for us all along! Because of teh corruption!

    Who knew.

    daleyrocks (d9ec17) — 6/17/2008 @ 9:12 am

16. It amazes me that Cyrus Sanai still has his law license after **publicly admitting that his campaign to bring down several federal judges is just “part of his litigation strategy” to win a divorce case.** He’s already been called one of the most abusive litigants that the district court has ever seen. Is this current debacle, instigated by Sanai for his own personal benefit, really all that surprising after reading that transcript? And can we really know that it’s not just a coincidence that the first record of any of the Kozinski content in search engines was around the time (December, 2007) when Sanai was “shopping” the story? It’s all too convenient for him.

    The solution (900637) — 6/17/2008 @ 9:28 am

17. nk, it’s a word not an acronym!

    MamaAJ (788539) — 6/17/2008 @ 10:04 am

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Carol Platt Liebau
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Doc Rampage
Don Surber
Donald Luskin
Double Toothpicks
Dowingba
Dustbury
EagleSpeak
Error Theory
Everything I Know Is Wrong
FullosseousFlap’s Dental Blog
Galley Slaves
HipperCritical
Hoodathunk?
How Appealing
Hoystory.com
Hugh Hewitt
InstaPundit
Internet Radio Network
Jules Crittenden
Junkyard Blog
Just One Minute
Kausfiles
KelliPundit
L.A. Observed
Laura’s Miscellaneous Musings
Les Jones
Let’s Try Freedom
Likelihood of Confusion
Lileks: The Bleat
Little Green Footballs
Local Liberty Blog
Margi Lowry
Media Lies
Michael J. Totten
Michelle Malkin
My Pet Jawa
Neo Warmonger
New England Republican
Oh, That Liberal Media
Okie on the Lam
Old Patriot’s Pen
Oraculations
Outside the Beltway
Pajama Pundits
Patrick Ruffini
Pejmanesque
Piece of Work in Progress
Pigilito
Polipundit
Politburo Diktat
Popehat
Power Line
PressThink
Professor Bainbridge
Professor Chaos
Pundit Review
Radley Balko
Ramblings’ Journal
RantingProfs
Real Clear Politics Blog
Right Wing News
Rightwing Nuthouse
Roger L. Simon
Say Uncle
ScrappleFace
Sister Toldjah
Sisu

18. 15, Daleyrocks, Your comment reminds me of a Gene Hackman/Dan Ackroyd movie in which Dom DeLuise plays a Jewish Pornographer who complains to Ackroyd, “Thank me, because somebody had to be the Sleze Big!”

    PCD (5c49b0) — **6/17/2008 @ 10:11 am**

19. Great work, Patrick. I have skimmed many of the posts and comments as it is not a great interest of mine but what I have read is certainly well done by you.

    Mike K (f89cb3) — **6/17/2008 @ 10:11 am**

20. I must say, the man writes a good letter.

    Speaking as a practicioner of the martial arts, Cyrus Sanai is just doing what a good warrior ought to do. When he doesn’t receive satisfaction in the outcome of the conflict by one line of attack, he must attempt another line of attack, and again and again until he can fight no more or finds a way to win.

    If you’re boxing against a boxer and you’re losing, even when you try really hard, the answer is not to try harder. It’s to try wrestling. If you find out that he’s a better wrestler than you too, you have to go to eye pokes and groin hits.

    It’s pretty obvious that Cyrus Sanai has shifted his gears and is at the level of eye pokes. It might not be fun to watch but it’s having a better result for him than boxing or wrestling.

    The question comes as to where he will stop – what line won’t he cross – but as it seems that he’s drawn some attention to these apparent collusions and conflicts of interest, he may not have to progress to groin hits.

    luagha (5cbe06) — **6/17/2008 @ 10:36 am**

21. >> *“If you’re boxing against a boxer and you’re losing, even when you try really hard, the answer is not to try harder. It’s to try wrestling. If you find out that he’s a better wrestler than you too, you have to go to eye pokes and groin hits.”*

    Except the problem is that in your analogy, Judge Kozinski is one of the referees. Cyrus Sanai lost his fight, fair and square. And if you listen to the district court, he did more than his fair share of eye-poking and groin-punching. Now he’s mugging the referee in the parking lot. That’s not “trying harder.” That’s “turning the courts in the World Wrestling Federation.”

    Cyrus Sanai’s conduct is a disgrace. He lost. But, unlike thousands of other litigants every day, he is unable to move on with his life. Now he’s systematically trying to destroy every judge who dared to rule against him. He shouldn’t just be disbarred, he should be medicated.

    The solution (900637) — **6/17/2008 @ 10:43 am**

22. The sock puppets and trolls are obviously getting unhappier as the facts emerge and a hearing has become inevitable.

    The core issue, as even Judge Zilly stated in his slamming of me and mine, was our persistent and repetitive efforts to stop a corruptly appointed judicial referee from acting and to preserve the ability to reverse his actions once justice has been done.

    Just as I don’t hear principled defenses of Kozinski’s mp3 copying and sharing, the trolls and sock puppets can’t deal with the undisputable facts.

    For the fans of judicial corruption–which consist of those attorneys, appointed special purpose judicial officers, and judges who profit from it–nothing can be worse than putting the practices up to the light of day. So instead this is what you get: repetitive ad hominem attacks, fuming about bar complaints, whining about privcay on a web site to which Judge Kozinski himself distributed links; but no actual human being with a name stepping forward and saying, yes, Judge Kozinski can share mp3s; yes, it is perfectly fine for a federal judge to take the side of state court corruption; and (with one qualification) yes, a federal judge can

- **Southern Appeal**
- **Speed of Thought**
- **Spyware Warrior**
- **Stop the Bleating!**
- **Strong As An Ox and Nearly As Smart**
- **Stubborn Facts**
- **Such Little Things**
- **The Astute Blogger**
- **The Big Picture**
- **The Buck Stops Here**
- **The Dialectizer**
- **The Hotline**
- **The Iconic Midwesterner**
- **The Movie Court**
- **The National Debate**
- **The Onion**
- **The Shape of Days**
- **The Spoons Experience**
- **The Unalienable Right**
- **The View from the Nest**
- **The Volokh Conspiracy**
- **ThoughtsOnline**
- **ThreeSheets**
- **TigerHawk**
- **Tim Blair**
- **Tim Worstall**
- **Villainous Company**
- **VodkaPundit**
- **Winds of Change**
- **Wizbang**

Links

Patterico Sells Out

- **Conservative Blog Advertising**
- **MiniNetwork**
- **L.A. Blogads Network**
- **My Food Diary**

Meta:

- **RSS 2.0**
- **Comments RSS 2.0**

publicly comment on existing litigation not before him. The qualification of course is Mrs. Kozinski, who in her letter very clearly states that her husband is being penalized for speaking out against me. Well, Mrs. Kozinski, read canon 3(a) of the judicial ethics rules. That's prohibited.

One more thing. The Sanai cases are not over. Everything is on appeal in state and federal courts.

Cyrus Sanai (4df861) — **6/17/2008 @ 10:57 am**

23. This is all glib, facile ass-covering. The guy's a fucking weasel: for him to pretend he has no interest in seeing Kozinski humiliated when he's mischaracterizing the contents of Kozinski's website and shopping it to the media is just hilarious.

    BC (abe920) — **6/17/2008 @ 11:09 am**

24. **http://overlawyered.com/2008/06/cyrus-sanai-kozinski-investigation-is-part-of-a-litigation-strategy-second-sanai-v-saltz-sanctions-order/**

    Ted (ca77af) — **6/17/2008 @ 11:18 am**

25. BC, don't worry, no one has any respect for Cyrus. LAT Times used him as a foil, but even they know he's a nut who probably fantasizes about doing much worse than lying about Kozinski. From his obsessive conduct, I think he's dangerous and Kozinski should get a retraining order for him and definitely his wife who Cyrus has been particularly vicious towards. But no one really thinks there was anything rational or relevant to his case in lying about the "porn" Kozniski probably saw for the first time after this story broke. I still think it's totally reasonable to guess that Cyrus found a way to put these items on the server. Both father and son admit they may have put funny sexual pics on their server, but they don't recall it, and remember that the legal document Cyrus needed to be on the server, the one the State of California could not find there, miraculously appeared along with this 'porn'. Cyrus claims that Kozinski deleted it to evade investigation and then posted it right back afterwards. He really thinks someone is going to believe that.

    Cyrus, I love that you think your critics are sockpuppets. Are they all judges? hahahaha, that's great! Perhaps you will defend yourself by claiming all your admissions on this blog of extremely dishonest and abusive conduct were made by sockpuppets!

    As many times as Cyrus says he's going to stop posting, he'll be back. Either as a paper-thin sockpuppet (as he's obviously been doing), or under his own named pretending to be heroic as he claws at the giants above him. Kozinski isn't going anywhere (up or down). Cyrus has reached his high point as one of the festering weirdos or the internet age. Cyrus, I certainly hope you don't own any weapons.

    Jem (4cdfb7) — **6/17/2008 @ 11:23 am**

26. Ted, that's a great link. Patterico, please consider adding it to your page. If you're going to give Cyrus a podium (and it's certainly entertaining enough to be worthwhile), please consider adding some context to this guy. He lost and lost and lost, and one of his victims was awards over $1 million in attorneys fees used defending against Cyrus (that too, was appealed). Though no judge has ever been found to be biased against Cyrus, Cyrus has shown he'll lie about it and say they were (which is libel), and Cyrus actually thinks something like eight judges, all with pristine records, are all biased against him.

    And of course, if you ask Cyrus if he planted 1 or more files on Kozinksi's server, he will (in sockpuppet form) accuse you of slandering him. In Cyrus's world, no one gets away with disagreeing with Cyrus. I hope the police are keeping an eye on this guy, or at least watching the families of these many judges.

    Jem (4cdfb7) — **6/17/2008 @ 11:29 am**

27. Cyrus, you need to learn to get to the point faster. I got too tired of your higher and mightier goals schtick to read past the second paragraph.

Barney15e (7f9027) — 6/17/2008 @ 11:51 am

28. Cyrus, I've seen the same stuff in emails and on tv shows. I also have mp3's on my computer. If I actually opened it up to the world, my mp3's would be indexed at file sharing sites, also. That's how the World *Wild* Web works.

    Barney15e (7f9027) — 6/17/2008 @ 11:55 am

29. Cyrus (and everyone else): What Cyrus provided to the L.A. Times for their (probably) defamatory article was *stolen materials* that were hacked off a computer in a private residence that happened to be occupied by Judge Kozinski, but also by his family. Ergo, whatever materials Cyrus found titillating was (a) the fruit of the poisoned tree obtained in a reprehensible if not actionable manner and (b) none of his damned business!

    Personally, forget about the Judge and let's go after this p.o.s. lawyer (good merciful heavens I hate the breed – despite being a paralegal myself) who apparently feels that if he doesn't get his precious way, a scorched earth policy need to go into effect!

    Cyrus STOLE, people – the rest is basically irrelevant!

    Gayle Miller (e5a6d9) — 6/17/2008 @ 12:14 pm

30. Cyrus did not break into anything and he did not steal anything. He asked a computer questions and the computer answered him. You rabid Kozinski supporters are not helping the judge's cause with your demands that we accept your ignorance of how internet servers work.

    nk (4bb2be) — 6/17/2008 @ 12:25 pm

31. No, wait, maybe you are. Filth is humor. Mean is funny. Internet servers are private.

    nk (4bb2be) — 6/17/2008 @ 12:27 pm

32. BTW, sorry to break into your site like this, Patterico.

    nk (4bb2be) — 6/17/2008 @ 12:30 pm

33. NK, I will disagree with you, and I am an IT professional and a security officer. I do not believe Kozinski for a second thought he was on a PUBLIC server such as Patterico is on.

    I liken Sanai to the same "people" who ransack garbage for social security numbers, bank documents, etc, to forge and/or steal identities.

    He went looking, not in public places like newspaper archives, public websites, but on a server. He had to repeatedly query the server for a directory and read each file to find what he wanted, dirt on Kozinski.

    Mr. Sanai, finding dirt doesn't prove your case. It just sullies you further in the public eye.

    PCD (5c49b0) — 6/17/2008 @ 12:35 pm

34. I can see that it was hard to navigate. I do not see that it was made inaccessibble except to authorized users so that an unauthorized user must have been a hacker.

    As for Cyrus uploading the stuff, that sounds insane to me. **Especially after the judge and his wife have already owned up to it, Jem.**

    nk (4bb2be) — 6/17/2008 @ 12:54 pm

35. I'll say it again: At this point, I couldn't care less about the "porno" or even the mp3's. Who

started this and how we got here are beside the point to me. Cyrus Sanai wanted attention and he got mine, to this extent: ALL I care about now is the charge that Judge Kozinski hid/lied about the website to the investigating committee.

Am I understanding that charge correctly? If so, we had all better prepare for the possibility that Kozinski is going down. It saddens me to lose one of “my” guys, but I am starting to think it might be a possibility. If he did what Sanai has charged, he is no longer capable of acting as a judge or even as a lawyer, in my opinion. This is tantamount to the Bill Clinton perjury issue. How we got to this point is meaningless as to that charge and Judge Kozinski’s actions.

I’ve asked about this a few times (and made the same tired analogy), and nobody’s bit, so I guess I’ll drop it now. I do hope, though, that this charge is untrue or that I have misunderstood what is being claimed.

fat tony (601b8d) — **6/17/2008 @ 12:58 pm**

36. Gayle Miller, you are absolutely incorrect.

I think Cyrus is definitely a bit shady, but what he did was NOT hacking. If you put files on web server within a directory that is wide open to the world, you cannot claim to have been “hacked” when someone stumbles upon them.

It took no password-cracking, no username-guessing, no port sniffing, nor did it take any nefarious action whatsoever. It just took a little web surfing. That. Is. Not. Hacking.

Cyrus stole nothing.

h2u (81b7bd) — **6/17/2008 @ 1:29 pm**

37. nk, I do not subscribe to the idea that a person impliedly waives any expectation of privacy in material they place in a location where a random chucklehead could get at it by munging URIs.

That’s not ignorance of how internet servers work; that’s simply a refusal to drink this “the web is a public medium and information wants to be free!” Kool-Aid.

BC (abe920) — **6/17/2008 @ 1:39 pm**

38. BC, that’s not kool-aid drinking. That’s how it works. To dispute this fact makes YOU look ignorant.

Here’s the best way I can explain this…

Situation 1) You live in a house with a long, gated driveway and a high hedge surrounding your property. You can safely assume that a passerby will be unable to look through your windows unless they trespass in some manner.

Situation 2) You live in a house with no fence, no gate, no private driveway. You can safely assume that a passerby will be entirely able to look through your windows.

It’s as simple as that. If you leave a web server open to public access — as in no password protection, no IP verification, open directory indexes — then you have no expectation of privacy. It is entirely on the up-and-up for me to navigate to your server and view the files made available.

In fact, that’s how this crazy internet thing works. There are plenty of very easy ways for Alex Kozinski to have prevented Cyrus from accessing his files. And there plenty of very easy ways for Alex Kozinski to have distributed files to his friends without giving access to the entire internet. As such, it is entirely Alex Kozinski’s — or whomever he wants to blame for his server administration — fault for allowing this to occur.

h2u (81b7bd) — **6/17/2008 @ 1:52 pm**

39. h2u, please don’t presume to lecture me about the way the Internet works. I’ve been an IT professional for the past 20 years. On any given day I’ll probably have configured three or

four enterprise servers (web, mail, application, pick your poison) before lunchtime. Spare me the dumb home/fence/driveway misanalogies.

The basis of our disagreement is as follows:

* You believe that misconfiguring a web server is tantamount to publishing everything on that server that can somehow be reached without actual cracking.

* I believe that misconfiguring a web server is just misconfiguring a web server.

To put it another way, you're conflating the ability to browse a misconfigured server with the propriety of browsing a misconfigured server. I'm not.

BC (abe920) — **6/17/2008 @ 2:25 pm**

40. BC,

I, too, am an IT professional.

The problem is that you're ASSUMING this web server was misconfigured. I make no such assumption. For all we know it was configured that way for the purpose of file sharing.

As such, one cannot fault Cyrus for visiting said web server. The files were in view of the public and no "hacking" was necessary to gain access to them.

It's as simple as that.

Cyrus actually raises an issue that I think has merit: that Alex Kozinski was — perhaps unintentionally — illegally distributing copyrighted music.

h2u (81b7bd) — **6/17/2008 @ 2:41 pm**

41. *The problem is that you're ASSUMING this web server was misconfigured. I make no such assumption. For all we know it was configured that way for the purpose of file sharing.*

Except, you know, that Kozinski, his wife, and his son have all consistently claimed that the server was misconfigured and that the directories were never intended to be open for public consumption.

But hey; maybe they're lying. Maybe some unsophisticated users DELIBERATELY left a gaping security hole in their web server so that random douchebags could sift through their stuff with an eye toward humiliating them.

If you're an IT professional, kindly pull your head out of your ass.

BC (abe920) — **6/17/2008 @ 2:46 pm**

42.

> Just as I don't hear principled defenses of Kozinski's mp3 copying and sharing, the trolls and sock puppets can't deal with the undisputable facts.

I'll bite, although I'm neither a troll nor a sock puppet.

Most of us have a good deal of legal MP3s on our laptops, computers, and, if applicable, home servers. The fact that our computers could, potentially, perhaps, be hacked does not mean that we are distributing copyrighted material in the manner of Napster. The law does not require that we only keep copyrighted material on sites that are not ever accessible to anyone save ourselves; it does not require that we have exactly one copy of everything, nothing more.

Judge Kozinski had those files on a family server so they could be accessed remotely and from any computer. That is all within the fair use exception to copyright infringement. He did not distribute them over the internet or otherwise make them accessible. In fact, the only time any mp3s were indexed on google.com was after Mr. Sanai himself had found them. (If Mr. Sanai's actions caused the files to be indexed, he, not Alex Kozinski, would be liable for copyright infringement.)

The Napster/Grokster cases are not the only copyright cases out there. I'll hearken back to Betamax, in which VCRs were found to be legal. Although they may have uses which are potentially infringing, they (unlike Napster) are used for largely legal purposes. Likewise, Judge Kozinski's server, which is largely used for legal purposes (even if we are to accept your version of events re: the mp3s), would not be automatically infringing because of the potential for illegal purposes. To hold otherwise would be to obliterate the fair use doctrine.

Finally, if the owners of the copyrighted material are upset about this, they will come after Judge Kozinski. Considering that, in the past week, they've ignored this, we can presume that they don't care. As copyright infringement, unlike the charges of pornography, is a civil matter, the relevant question is not whether or not Judge Kozinski has done something that Mr. Sanai, the public, or other judges dislike; it is whether or not his actions violated the rights of the other parties. If those parties have no desire to bring a suit, despite the fact that Judge Kozinski is clearly capable of paying damages, we can safely assume that no breach of copyright has occurred.

bridget (add3eb) — **6/17/2008 @ 2:47 pm**

43. > Except, you know, that Kozinski, his wife, and his son have all consistently claimed that the server was misconfigured and that the directories were never intended to be open for public consumption.

    And there is absolutely no way to verify this claim except to take them at their word. That's just not good enough. You have no idea whether or not that server was misconfigured or configured exactly as AK intended it to be.

    > If you're an IT professional, kindly pull your head out of your ass.

    Stay classy, San Diego. You're the one making assumptions.

    h2u (81b7bd) — **6/17/2008 @ 2:53 pm**

44. And just to make this crystal clear: Cyrus did no wrong by viewing files located on a public web server. Anyone who accuses him of "hacking" is simply wrong. He may be a shady, over-litigious jabroni but a hacker he is not.

    h2u (81b7bd) — **6/17/2008 @ 2:57 pm**

45. I'll associate myself with the comments of B.C.

    Its really misleading — almost to the point of the LA Times' donkey reference — to suggest the judge "shared" his MP3s with the connotation that he loaded them into a P2P program or uploaded them onto a Russian file server.

    What he did, instead, was what my dear old auntie did when she set up her first home network. She shared a directory between her computers, but then never configured proper security on her wireless network. I showed her this by pulling up her tax return from out in the driveway.

    The fact there were MP3s in a "stuff" directory is not indicative of any wrongdoing in and of itself. While the RIAA certainly doesn't like it, there's a strong argument under the time-shifting and medium-shifting rights of fair use that the judge or anyone in his family can make an MP3 copy of any CD lawfully owned. My Microsoft Windows computer does this automatically, using Windows Media Player, the moment I insert a CD that the computer hasn't seen before. Itunes software does the same thing when you get a new CD and go to put it on your IPOD.

    The judge messed up when he (or his son) tried to make it so the judge could link selected content. They left it possible for users to browse directories, instead of adjusting permissions for individual files they wanted to make public, or better still, having a specific folder for that sort of thing.

    Back in the day of "FTP" servers, we called these directories "PUBLIC" because that was their expressed intent. Since the directories were just a folder in our local computer in actuality, we also named them "PUBLIC" so that they people using the system would realize that _anything_ in them could be sought and read.

    But on public HTTP servers still limited browse access.

The judge left his MP3s somewhere that Russian haxor spiders could find them and index them on Russian MP3 pages, and where the crank that started this whole mess could find them.

I've yet to see any evidence that the judge set out to "share" his "stuff" except for discreet files he intentionally linked, which did not include any of the other stuff.

For my part, I do wonder whether the LA Times characterization of the materials was based on their independent review, or descriptions provided by the "source" — but it is clear that they owed their readers disclosure of the source's motivations and background as an attorney held by numerous judges to have engaged in frivolous, groundless and vexatious litigation conduct.

Gonzo (aec2cd) — **6/17/2008 @ 3:11 pm**

46. Ted – Thanks for that link to Judge Green's decision.

Cyrus Sanai Lied
His Case Died

It's pretty obvious why he didn't mention that decision relating to the U.D. Registry case, only that everything Judge Grimes had done was overturned on appeal. The boy likes to omit facts, as Judge Kozinski pointed out in 2005.

daleyrocks (d9ec17) — **6/17/2008 @ 3:20 pm**

47.

> What he did, instead, was what my dear old auntie did when she set up her first home network. She shared a directory between her computers, but then never configured proper security on her wireless network. I showed her this by pulling up her tax return from out in the driveway.

This is NOT the same thing.

There is a HUGE difference between enabling File Sharing within your local area network and enabling web sharing with the rest of the internet.

> The fact there were MP3s in a "stuff" directory is not indicative of any wrongdoing in and of itself.

Actually, if that "stuff" is sitting in a public directory in the 'net — not a LAN — then there could very well be wrongdoing.

h2u (81b7bd) — **6/17/2008 @ 3:28 pm**

48. Sorry for the oversimplification here, but Sanai strikes me as the terrible result of the breeding of a petulant child with a loon. Get ready for the ethics complaint soon to be filed by me, against Sanai.

Wayne Resnick (890cbf) — **6/17/2008 @ 3:32 pm**

49. Let me first state that I have no affiliation with either Cyrus Sanai, Alex Kozinski, or anyone related to the case. I'm merely amused, and commenting on the theory of conflict in general.

It's a matter of opinion on how dirty Sanai is fighting. Any conflict can shift lines of attack, escalate, or de-escalate. Mr. The Solution considers it to be attacking the referee, not playing the game. Mr. The Solution hasn't read up on, say, the history of the World Chess Championships and just how important manipulating the referee is to winning the game. I think there's something going on in the NBA about that now too…

Sanai has stated that he expects vilification and payback. That should be a clue as what he intends to do from here and what retaliation he has already chosen to accept in the pursuit of his final goal which is likely not the divorce case any longer. (From what I gather, and I am just an IT professional by day and a martial arts teacher by night, the actions of the divorce case and what Sanai considers to be unfair collusion and conflict of interest are pretty much set in stone by now and unlikely to be overturned even if he does manage to change

Washington's laws on the subjects – part-time judges acting as lawyers before the court arguing to their day-to-day coworkers, appointing of special masters related to one of the parties, etc – that permit this action.)

I just feel the need to finish with a paraphrased quote from Eric Wujcik, a noted game theorist and designer who unfortunately recently passed away of pancreatic cancer. It went something like this:

"Let's say that some government says that it will kill you and all you hold dear in one week's time unless you meet with the world chess champion and beat him in a game of chess. What would you do?

Well, maybe you know the game a little already. So the first thing you'd do is get the best teachers in the world to teach you the game as fast as possible. You'd get the best experts on the world chess champion's style to school you on how to beat him. But rationally, there's still no way for you to learn enough in a week to win.

Would you bribe the referee to look the other way so you could make two moves for the chess champion's one? Would you drug his water so he can't think straight? Would you have the timeclock tinkered with so it counts down his time three times as fast? Even with all that you might still not win. Would you have your compatriots put a gun to his children's head and say, "Don't move that rook?"

Now, because Sanai's current strategy is bearing fruit, I'm thinking he's going to stick with it a while. I would expect to see personal peccadillos from any other judges involved to come out soonish in the papers – this one hit big for them and got them lots of attention and viewers. It might be enough for them to go with more juicy dirt on the next judge, even if that judge is perceived as being more liberal than Kozinski. Only time will tell, but as for me, I'm fairly certain that Sanai won't resort to any actual violence or criminal wrongdoing. He knows that that is the only sure way to lose his final goal.

luagha (5cbe06) — **6/17/2008 @ 4:37 pm**

50. #11
cyrus, you promised to dial down your blog appearances in comment #1, but have since made two more comments. how can we miss you if you won't go away?
ADA is dead on point here. I wonder why we are wasting more time on this slob job.

love2008 (1b037c) — **6/17/2008 @ 4:38 pm**

51. Boy, I wish I could dial down my blog appearances. But Luagha raises a factual issue that I need to respond to.

None of the issues in the state or federal case are set in stone. The appeals from the final judgment in the federal case are at the briefing stage before the Ninth Circuit. The divorce case had to be remanded because Judge Thibodeau did not do his job and resolve all of the issues, and another appeal is sitting there. So nothing is finally resolved.

So if everything were done, dusted, and no further appeals possible, then maybe there would be an argument that there could be no strategy. However that is not the case.

Now let's address the mp3 question. Yes, lots of people, including myself, have mp3s or their equivalent in their I-tunes folder or similar folder of music. That is not where the relevant mp3s were. They were in the same /stuff/ folder as the pornography, a folder which was indexed, and as to which there were "Free MP3″ sites pointing. To me, that's prima facie evidence of file sharing.

But let's say that's not true. Let's say that somehow, someway, the information was "hacked" by the offshore site. Well, Judge Kozinski has opined in Perfect 10 that knowledge or lack of same is no defense; contributory infringement still occurs. He demands a higher standard of others than he himself meets.

Of course, the reality is that Judge Kozinski admitted distributing material from that directory to Scott Glover.

What's the truth? Well, if the Kozinski computer is unspoliated, it will be pretty easy to determine if he signed up for an mp3 site, or who was downloading what and when. If it is spoliated, then it will be much harder.

On a separate note, you have the former administrative head of the United State Courts system, Ralph Mecham, accusing Kozinski of a felony by disabling the Court system's firewall. That's not my accusation, it was made last year but no action was taken on it. Mecham has no lawsuits pending.

Of course the Kozinski-ite position is a Catch-22. When asked about Mecham's accusation in a California Lawyer article, Kozinski said he was "meshugginah" (crazy) for continuing to press this issue. I have district court judgments to reverse; raising Kozinski's past and current interference in that case makes me some kind of despicable, I don't know, lawyer or something.

So if you have ongoing litigation in which Kozinski has interfered, one is a slimeball, but if one is just pushing the issue with no interest in the outcome, like Mecham, one is a nutcase.

The attitude of the sock puppets and trolls is nothing more than a blank check for judicial misconduct. It's no wonder so few people report it; the consequences are to put oneself at the mercy of an anonymous mob.

Cyrus Sanai

Cyrus Sanai (4df861) — **6/17/2008 @ 5:23 pm**

52. Judge Green replaced Judge Grimes on Cyrus' rent dispute after appeal and found for the defendants, describing Cyrus's abhorrent conduct in language just as descriptive as Judge Grimes, which Cyrus neglected to mention here. Judge Green said all the litigation was in bad faith on the part of Cyrus and awarded the defendants $1 million in legal fees.

    Cyrus made the following comment at overlawyered.com today about it, indicating that, yes, his string of bad luck in finding biased judges has continued and he aims to get another one tossed of the case on appeal. He also hints at a financial interest, which is a serious allegation.

    "Judge Green's rulings are stayed and on appeal. They will end up in the same place as the prior judges rulings, as they were based (a) on the same errors of law as Judge Grimes, (b) financial interest in the outcome of the litigation, and (c) his refusal to vacate the void orders of the past as ordered by the Court of Appeal (a refusal you no doubt endorse given your criticism of the California Supreme Court). Since he refused to vacate the void orders, he got to the same result. Hardly a surprise……….

    Indeed, I know that once I get Judge Green reversed and tossed, you will state that the Court of Appeal was confused, or that it was on a "technicality." You accept the results that you like, and reject the results that don't fit in to your ideological and financial interests.

    Cyrus Sanai

    Cyrus Sanai on June 17th, 2008″

    http://overlawyered.com/2008/06/cyrus-sanai-kozinski-investigation-is-part-of-a-litigation-strategy-second-sanai-v-saltz-sanctions-order/#comments

    daleyrocks (d9ec17) — **6/17/2008 @ 6:30 pm**

53. *And there is absolutely no way to verify this claim except to take them at their word.*

    Admittedly. On the other hand, I can assess said claim in the plain light of experience: unsophisticated users rather routinely fail to secure SOHO servers out of neglect, but almost never fail to do so by design — even when trying to file share. People are frequently ignorant or careless, but they're not normally completely retarded.

    So I don't have to entirely take the Kozinskis' word for it. I can apply some common sense. Try it some time.

    That's just not good enough.

    For who? Some random Internet crank operating under the handle of "h2u", who claims to be an IT professional but evidently has no experience to speak of dealing with how non-technical people are prone to configuring/misconfiguring their SOHO server installations?

BC (abe920) — 6/17/2008 @ 6:32 pm

54. ***Question and answer***

Q: How can you tell if a lawyer is well hung?
A: You can't get a finger between the rope and his neck!

Q: If you are stranded on a desert island with Adolph Hitler, Atilla the Hun, and a lawyer, and you have a gun with only two bullets, what do you do?
A: Shoot the lawyer twice.

Q: What do you call 5000 dead lawyers at the bottom of the ocean?
A: A good start!

Q: How can you tell when a lawyer is lying?
A: His lips are moving.

Q: What's the difference between a dead dog in the road and a dead lawyer in the road?
A: There are skid marks in front of the dog.

Q: Why won't sharks attack lawyers?
A: Professional courtesy.

Q: What do you have when a lawyer is buried up to his neck in sand?
A: Not enough sand.

Q: Why did God make snakes just before lawyers?
A: To practice.

A command was given to a dog: "SPEAK!"
The dog said in return: "Not without my lawyer present!"

Q: Why is going to a meeting of the Bar Association like going into a bait shop?
A: Because of the abundance of suckers, leeches, maggots and nightcrawlers

Q: Why are there so many lawyers in the U.S.?
A: Because St. Patrick chased the snakes out of Ireland.

Q: What?s the difference between a lawyer and a herd of buffalo?
A: The lawyer charges more.

love2008 (1b037c) — 6/17/2008 @ 6:44 pm

55.

> So I don't have to entirely take the Kozinskis' word for it. I can apply some common senseassumptions.

Fixed that for you.

> Some random Internet crank operating under the handle of "h2u"

Crank? What's with the name-calling?

> who claims to be an IT professional but evidently has no experience to speak of dealing with how non-technical people are prone to configuring/misconfiguring their SOHO server installations?

Non-technical people don't configure server installations. They don't create sub-domains. They call in to Dell complaining about how Internet Explorer wont play their YouTube video.

A technical person set up Alex Kozinski's web server. That is — ultimately — the bottom line. No matter who did it, they had to at least be somewhat capable of firing up a server. That's not a non-technical person. And they bear the responsibility.

And, again, you must refrain from assuming that everything the Kozinski's say is truth. The facts are what matter, not your convenient assumptions. Cyrus accessed a web server available to the public via a domain name, not an IP address. That, to me, indicates some measure of publicity.

But what do I know, I’m just some crank refraining from making an assumption.

h2u (4a7c7f) — **6/17/2008 @ 6:48 pm**

56. As it’s not displaying properly in my browser I feel I must clarify:

The first quote in my previous post should have the words “common sense” struck-thru, implying that BC is making an assumption that cannot be proven in any way.

h2u (4a7c7f) — **6/17/2008 @ 6:51 pm**

57. ***Actual stupid questions asked***
The below excerpts appeared in the Salt Lake Tribune. They were taken from real court records.
Now doctor, isn’t it true that when a person dies in his sleep, in most cases he just passes quietly away and doesn’t know anything about it until the next morning?

Q: What happened then?
A: He told me, he says, “I have to kill you because you can identify me.”
Q: Did he kill you?

Was it you or your brother that was killed in the war?

The youngest son, the 20-year-old, how old is he?

Q: She had three children, right?
A: Yes.
Q: How many were boys?
A: None.
Q: Were there any girls?

Were you alone or by yourself?

Q: I show you Exhibit 3 and ask you if you recognize that picture?
A: That’s me.
Q: Were you present when that picture was taken?

Were you present in court this morning when you were sworn in?

Q: You say that the stairs went down to the basement?
A: Yes.
Q: And these stairs, did they go up also?

Q: Now then, Mrs. Johnson, how was your first marriage terminated?
A: By death.
Q: And by whose death was it terminated?

Q: Do you know how far pregnant you are now?
A: I’ll be three months on March 12th.
Q: Apparently then, the date of conception was around January 12th?
A: Yes.
Q: What were you doing at that time?

Do you have any children or anything of that kind?

Was that the same nose you broke as a child?

Q: Mrs. Jones, do you believe you are emotionally stable?
A: I used to be.
Q: How many times have you committed suicide?

So, you were gone until you returned?

You don’t know what it was, and you didn’t know what it looked like, but can you describe it?

Q: Have you lived in this town all your life?
A: Not yet.

A Texas attorney, realizing he was on the verge of unleashing a stupid question, interrupted himself and said, “Your Honor, I’d like to strike the next question.”

Q: Do you recall approximately the time that you examined that body of Mr. Huntington at St. Mary’s Hospital?
A: It was in the evening. The autopsy started about 5:30 P.M.
Q: And Mr. Huntington was dead at the time, is that correct?
A: No, you idiot, he was sitting on the table wondering why I was performing an autopsy on him!

love2008 (1b037c) — **6/17/2008 @ 7:16 pm**

58.

> The judge messed up when he (or his son) tried to make it so the judge could link selected content. They left it possible for users to browse directories, instead of adjusting permissions for individual files they wanted to make public, or better still, having a specific folder for that sort of thing.

Not to mention then putting a url for a file out there on the internet.

Either they really believed that people couldn’t see the other files–despite the fact they could make a link for people to see without doing anything but putting the file in a certain directory–or they knew it was open and just didn’t think it would ever be a problem.

BTW, I don’t know if anyone has brought up the fact that public access to this site must have been going on for months. The Kozinskis could have checked a log and noticed traffic coming in from all sorts of interesting locations…like Russia and the LA Times.

If you put up a web server with the plan of letting people in to access files without passwords or any other protection AND you don’t check the logs, I can’t find a lot of sympathy when people look at your files.

I, too, have many years of IT experience and this reminds me of countless conversations along the lines of: “I need to recover that file! It was super-important!!1!” Okay, did you back it up…ever? “No…but I need it now!” Well, I’m sorry it happened, but you have been told 17 million times about backing up and you had that computer disk fail last year, so you’ll understand if I don’t break out the violins.

I know that you didn’t want to lose the file, but computers take a little more effort than that.

MamaAJ (788539) — **6/17/2008 @ 7:26 pm**

59. “People are frequently ignorant or careless, but they’re not normally completely retarded.”

BC – There is an individual who uses the screen name Levi to comment on this blog. Spend a little time reading his comments and your conclusion above might change.

daleyrocks (d9ec17) — **6/17/2008 @ 7:31 pm**

60. *“Mr. The Solution hasn’t read up on, say, the history of the World Chess Championships and just how important manipulating the referee is to winning the game. I think there’s something going on in the NBA about that now too…”*

Except this isn’t a game. This isn’t a boxing match. This isn’t the NBA finals and no one threatened to “kill him and all he holds dear.” It’s a case of a pompous vindictive twit who’s so full of himself that every defeat he suffers must be someone else’s fault and the result of some sort of conspiracy against him.

It bears keeping in mind his vendetta is by no means limited to Kozinski, but a bunch of other federal judges who are far more respectable and ethical than he will ever be.

He’s not Alfred Dreyfus writing J’Accuse, he’s not the Count of Monte Cristo seeking revenge after being framed–he’s the kind of guy who upon receiving a low grade in school (instead of studying harder) will try to smear or pick a fight with the teacher.

In that scenario he’d be sent to detention, hopefully here he’ll be disbarred.

Anon (5c20ae) — **6/17/2008 @ 8:28 pm**

61. pedant corner: emile zola wrote j’accuse *about* alfred dreyfus.

assistant devil's advocate (0d0876) — **6/17/2008 @ 8:37 pm**

62. Alas – my bad. (Clearly, I must now be hunted and made to pay for what I have done to Cyrus by that error.)

Anon (5c20ae) — **6/17/2008 @ 8:42 pm**

63. Sanai writes:

> But let’s say that’s not true. Let’s say that somehow, someway, the information was “hacked” by the offshore site. Well, Judge Kozinski has opined in Perfect 10 that knowledge or lack of same is no defense; contributory infringement still occurs. He demands a higher standard of others than he himself meets.

Would you care to provide a cite for that assertion, Sanai? I assume you’re referring to Judge Kozinski’s dissent in *Perfect 10 v. Visa*. As anyone who has actually read the case knows, Visa was alleged to have knowledge of the infringement. To quote Judge Kozinski’s dissent, “Plaintiff has repeatedly notified defendants that they are abetting the sale of stolen merchandise by ‘knowingly providing crucial transactional support services for the sale of millions of stolen photos and film clips worth billions of dollars,’ but to no avail.” 494 F.3d 788, 810. What Judge Kozinski argued in that dissent was not that “lack of knowledge is no defense,” but that given knowledge, the kind of contribution made by Visa to the infringement (i.e., processing the payments without which the infringement would not be profitable) qualified as a “material contribution” sufficient to give rise to contributory liability.

Now, if you are going to comment here again it needs to consist of one of two things: Either 1) A quote from a Kozinski opinion (with pin cite) asserting that lack of knowledge is no defense to contributory infringement, or 2) the statement “I am a shameless liar who is unfit to practice law.”

We look forward to hearing further from you.

Chris Newman (fa5bac) — **6/17/2008 @ 8:49 pm**

64.

> We look forward to hearing further from you.

What’s this “we”, white man? 🙂

Scott Jacobs (d3a6ec) — **6/17/2008 @ 9:06 pm**

65. Mr. Anon does not understand the meaning of metaphor, apparently. Nor of allusion.

Man is a player of games. Games are unreal. Yet they are a billions-dollar industry. Some are so powerful the state must regulate them. Some are deadly serious. People risk injury every day to play the games that entertain them as a mere leisure activity.

Some games are little laboratories where we isolate tiny little bits of tactics and strategy which we hope will help us when it comes to expanding our view of the real world. Chess, for example, notoriously teaches the idea of ‘looking moves ahead’ and incorporating knowledge of what your opponent is likely to do over time into your tactics.

We use analogies to games, or gaming metaphors, because we’ve all played games and we have some knowledge of what is taught in those little laboratories. That doesn’t denigrate the fact that this is real life and at least a million dollars worth of property appears to be on the line not to mention people’s reputations and futures.

Boxing is a game. It has rules and limitations for safety. It is not fighting. It is a limited version of fighting, a laboratory for teaching a certain part of fighting. If a boxer goes into a mixed-martial-arts arena and tries to just box, chances are he will lose. Mixed-martial-arts is also just a game, but with a wider rules set that purports to be in some way closer to real combat, and a boxer who chooses to just box in that arena is limited. Yet, someone who goes into a mixed-martial-arts arena and doesn’t know how to box is also in for a rough time, no matter how good his kicking and grappling and so forth might be.

Litigation is also a game. It has rules and referees. Just like boxing is a lesser part of fighting, litigation is a lesser part of conflict.
Yet it is deadly serious.

To use Anon’s own metaphor, if Sanai is a kid at aschool who got a low grade and then smeared the teacher instead of studying harder, Sanai’s letter is telling us in no uncertain terms that he feels the grading is fixed and that no amount of studying harder will get him a better grade.

I direct Anon to South Park's excellent episode on cheating recently. "If you get punished, you're a loser. But if you don't, you're SAVVY." Anon is free to hope that Sanai is caught and punished. I'm just waiting for shoe two and three to drop.

luagha (5cbe06) — **6/18/2008 @ 10:27 am**

66. Luagha- quit talking to me like I'm a five year old. I understood you perfectly well the first time, which doesn't change the fact I completely disagree. A "game" is a term a bunch of people use for a bunch of situations, including calously glossing over the implications of their actions. That one applies here.

    It further applies here because Kozinski was only peripherally related to the litigation this guy references. He wasn't the judge in that case, but a guy Cyrus was pissed at for writing a critical piece. To attack for influencing other judges behind the scenes might have made sense if he had actually found anything to support that the, but to smear him when he didn't find any evidence to support his initial accusation is vindictiveness and nothing more. The only possible manner in which this is a "litigation strategy" is to intimidate other judges. Screw him.

    Occasionally a student is correct to complain of unfair grading – occasionally, it's rare – when you're complaining about the unfair grading of numerous teachers or, here, the bias of numerous federal judges, the problem's not the teachers or the judges – it's you.

    I'm in the middle of work right now, so my apologies for any typos.

    Anon (55d03b) — **6/18/2008 @ 12:27 pm**

67. "In my case, this was carried out by Judge Kozinski. He published an article directly attacking me and discussing the merits of my case in the San Francisco Recorder in 2005, while the appeals where ongoing. He also put case-related materials on a web page devoted to my case within the domain "alex.kozinski.com," and linked the page to the on-line version of the article."

    Mr. Sanai, I am under the impression that Justice Kozinski's letter to the Recorder was in express rebuttal to a prior piece that you published inn the recorder.

    Am I mistaken?

    Stephen Gianelli (6ce4e5) — **6/18/2008 @ 1:49 pm**

68. Cyrus now has a story up on google outlining his view of this kerfuffle and all the corruption in the Ninth Circuit and Washington state. He refers people to this Patterico's site and this post to read more.

    His story is here:

    http://news.google.com/news?btcid=c4cc32fc179afeda

    daleyrocks (d9ec17) — **6/18/2008 @ 3:15 pm**

69. Can't remember whether I already commented on this or not.

    Cyrus has a syoty up on google news explaining his crusading role in this kerfuffle and his view of the corruption in the Ninth Circuit and Washington state. He directs readers to Pateerico's blog and this post to read more.

    His post can be found here:

    http://news.google.com/news?btcid=c4cc32fc179afeda

    daleyrocks (d9ec17) — **6/18/2008 @ 3:23 pm**

70. Can't remember whether I already commented on this or not.

Cyrus has a syoty up on google news explaining his crusading role in this kerfuffle and his view of the corruption in the Ninth Circuit and Washington state. He directs readers to Patterico's blog and this post to read more.

daleyrocks (d9ec17) — **6/18/2008 @ 3:24 pm**

71. story not syoty

    daleyrocks (d9ec17) — **6/18/2008 @ 3:25 pm**

72. I read this article in the NY Times about a litigation strategy employed by military lawyers defending GITMO detainees. Below are tidbits. I will say that the defense lawyers are doing what is exactly necessary when a tribunal system is fundamentally flawed.

    An Unlikely Antagonist in the Detainees' Corner

    By WILLIAM GLABERSON

    Published: June 19, 2008

    When he speaks publicly, Lt. Cmdr. William C. Kuebler, a military lawyer for a Guantánamo detainee, is careful to say his remarks do not reflect the views of the Pentagon.

    Lt. Cmdr. William C. Kuebler, testifying before a Canadian Parliament committee in April on behalf of his client, a Canadian.

    As if anybody would make that mistake.

    In his Navy blues, the youthful commander could pass for an eager cadet. But give him a minute on the subject of his client, a terrorism suspect named Omar Khadr, and he sounds like some 1960s radical lawyer, an apple-cheeked William Kunstler in uniform.

    ….

    But nearly seven years later, not one trial has been held, partly because the military defense lawyers have raised a continuous ruckus, challenging the commission system rather than simply defending their clients. After the Supreme Court said last week that the Constitution gave detainees a right to challenge their detention in federal court, some of the military defense lawyers, including Commander Kuebler, seized on the ruling as another opportunity to paralyze the war crimes system with new claims that detainees are entitled to even broader constitutional rights.

    The lawyers, trained in the Uniform Code of Military Justice, were selected to defend detainees in a judicial system established especially for terrorism suspects. But many of them share a sense of indignation that Guantánamo makes military justice seem like watered-down justice. Representing detainees, said one of them, Lt. Cmdr. Brian L. Mizer, "is a historic opportunity to defend the rule of law."

    Commander Kuebler (pronounced KEEB-ler) is the latest example of a lawyer in uniform attacking the Pentagon's legal system.

    ….

    The Kuebler strategy is obvious: to irritate the powers that be into sending his client, the last citizen of a Western country at Guantánamo, home to Canada. There is no sign yet of a ticket out for Mr. Khadr, 21, the son of a family once so close to Osama bin Laden that it is sometimes called Canada's first family of terrorism.

    But the irritation strategy seems to be driving the prosecutors to distraction.

    The latest incident, this month, was an assertion that found a quick audience. In a news release, he described learning of a Guantánamo manual that encouraged interrogators to destroy their notes. He suggested it was to evade questions about torture. Countless news accounts carried his claims.

    The military prosecutors had complained about Commander Kuebler's tactics before, but after the torture-concealment accusations it seemed they had reached their limit.

    ….

But Commander Kuebler argued that such attacks on Guantánamo were necessary. “If we’re not advocating against the process,” he said, “we’re not competently representing our clients.”

Commander Kuebler’s strategy follows energetic efforts by other military lawyers to undercut the commissions.

Lt. Cmdr. Charles D. Swift, who has since retired from the military, helped take the case of Salim Hamdan, a former driver for Osama bin Laden, to the Supreme Court. The ruling in 2006 invalidated the Bush administration’s first military commission system.

Commander Swift, now a visiting associate professor at Emory University, said he and other lawyers worried that focusing only on a defense in a commission trial would help the Pentagon argue that its system was fair enough to encourage zealous defense lawyers.

“We were concerned,” Professor Swift said, “that fighting would serve to validate the system.” The strategy to avoid that, he said, was: “Attack the system.”

….

“I don’t believe it is a fair process,” Commander Kuebler said.

As if anyone thought he did.

Cyrus Sanai (4df861) — 6/19/2008 @ 12:06 am

73. Cyrus, you didn’t “attack the system.” You found personal dirt on a judge who criticized you that neither vindicated you nor any accusation by you, but was useful for revenge and nothing more.

If Gitmo lawyers tried to defend their detainees by arguing somebody who wrote a critical article on them had porn on their computer, that would have been as much of a “litigation strategy” as you’re employing.

If I came to you and demanded you make your client settle with me on a high profile case, or I’ll release evidence you cheated on your wife, that would have been as much of a “litigation strategy” also, though my guess is you’d be a little more hesitant to describe it as such – and it would hopefully lead to me being disbarred.

Anon (491833) — 6/19/2008 @ 2:43 am

74. In Sanai’s latest comment posted June 18, 2008 (linked above), the self-described “**California attorney and English solicitor**” states:

“I became interested in Judge Kozinski’s website, “alex.kozinski.com”, after he sought to influence a case before the Ninth Circuit Court of Appeals by publishing an article about the case in a legal newspaper, and more importantly, placing case related materials on his website, alex.kozinski.com.”

He also says:

“Judge Kozinski is one of the most powerful federal judges not sitting on the Supreme Court, in his position as Chief Judge of the Ninth Circuit Court of Appeals based in San Francisco, California, which covers most of the western states.”

But what Sanai omits to say is that **he invited Kozinski to comment** (taunted into commenting might be more accurate) on September 16, 2005 (three years before Judge Kozinski became chief judge of the 9th), in a recorder piece Sanai called “Taking the Kozinski Challenge” and in which piece Sanai mentioned Judge Kozinski by name and expressly attacked his views:

http://pda-appellateblog.blogspot.com/2005_09_01_pda-appellateblog_archive.html#112684339987535279

In Sanai’s Recorder hit piece on Kozinski, Sanai essentially tries to advocate for the legal underpinnings of a then PENDING en banc petition for review in *Sanai v. Sanai* (a state court action in which Sanai attempted to revive issues long ago decided in Sanai’s parents’ long over state court divorce action).

Sanai's provocation worked, and on September 23, 2005 Kozinski posted his REBUTTAL to Sanai's Recorder attack piece.

Sanai then filed an ethics complaint against Judge Kozinski, for publishing the very REBUTTAL that Sanai goaded Kozinski into posting—accusing Kozinski in the ethics complaint of doing what *Sanai himself was up to* when he published his original September 16, 2005 attack piece: Influence the court regarding a pending petition for review.

In view of the fact that in the last couple of days Sanai has not only come out as the person who told the LA Times that Kozinski had a "porn" stash on his "website", *but now claims that the resulting publicity has been a part of Sanai's (misguided) "litigation strategy" in the 9th circuit*, the words of rebuttal published by Judge Kozinski on September 23, 2008 are downright prescient:

"Mr. Sanai's byline modestly lists him as "an attorney with Buchalter Nemer in Los Angeles." The firm's Web site identifies him as "a Senior Counsel and English solicitor … [whose] practice focuses on project finance, corporate finance and business transactions, with a particular expertise in international finance transactions." The careful reader would therefore have no cause to doubt that Mr. Sanai is a disinterested observer of this court's Rooker-Feldman jurisprudence. Nothing alerts the reader to the fact that *Mr. Sanai has been trying for years to get the federal courts to intervene in his family's state-court dispute, an effort referred to by a highly respected district judge as "an indescribable abuse of the legal process,* … the most abusive and obstructive litigation tactics this court has ever encountered. …" Nor would the reader — unless he happened to enter Mr. Sanai's name in the Westlaw CTA9-ALL database — realize that, as part of the same imbroglio, he and certain members of his family have hounded a state trial judge off their case (read the PDF); been held in contempt and sanctioned under 28 U.S.C. §1927 and had their ninth sortie to our court in the same case designated as "frivolous" and "an improper dilatory tactic" by the district court. A detached observer, Mr. Sanai is not.

"By failing to disclose his long-standing, active and abiding interest in the legal issue he discusses in his article, Mr. Sanai has done the reading public a disservice, cloaking his analysis with a varnish of objectivity. Worse, by publishing the article while he had a case raising this precise issue, Mr. Sanai used The Recorder to call unfair attention to his petition for rehearing, to the detriment of opposing parties who limited their advocacy to the briefs. And, by gratuitously drawing my name repeatedly into the controversy, he has also managed to disqualify me from participation in his case, skewing the en banc voting process."

Finally, I think it worth emphasizing that the two cases for which Mr. Sanai is now publicly known are both cases where Sanai is representing himself, and in each case he has arguably lost all perspective, and along the way filed a dozen writ and appellate proceedings.

In the case where Sanai publicly called out Kozinski, he as been trying to get the FEDERAL courts involved in a dispute that the state court does not even want any part of: Relitigating a long concluded **family divorce** for YEARS.

In that case he publicly attacked a man who is now the chief judge of the 9th circuit, then filed an ethics complaint when he defended himself, then searched his web server and tipped The Times that Kozinski had "porn" on his computer, thereby disrupting an ongoing federal prosecution, and making Sanai the national center of attention. And this is his "litigation strategy".

In the other case—where Mr. Sanai was recently sanctioned over $1 million as compensation for the other side's attorneys fees in a case that has spawned 15 court volumes and 14 separate writ and appellate proceedings (not including petitions to the California supreme Court), and has also been deemed by two sucessive state court judges as (allegedly) frivioulous and abusive —Sanai is suing over a $2,400 rent dispute arising from Sanai's attempt to "accept" a proffered apartment lease modification that he admits he knew was a mistake on the landlord's part, and that ultimately resulted in Sanai's credit being dinged for the alleged $2,400 debt, then mushroomed into a 7 year long legal battle royal in the state court libel action Sanai initiated.

The truly amazing thing is that throughout all of this, Sanai really believes that he is enhancing, not harming, his two litigation cases ("crusades" might be more accurate) as well has his professional reputation his for what he sees is as a fighter of the judicial corruption that lurks around every corner in the State of Washington as well as in the enabling 9th

Circuit Court of Appeals.

Stephen Gianelli (6ce4e5) — 6/19/2008 @ 5:57 am

75. Kozinski's REBUTTAL piece in the recorder, of course, was published on September 23, 2005.

    Sorry for the typo.

    Stephen Gianelli (6ce4e5) — 6/19/2008 @ 6:18 am

76. Stephen – What you fail to understand is that Cyrus Sanai does not lose cases on their merits unless it is part of a larger litigation strategy or due to the incompetence or corruption of the judiciary. That is what Cyrus is try to teach mere mortals such as myself through this seemingly endless series of appeals and abuse of the legal peocess described by various jurists.

    This is all obviously part of a plan. Please get with the program.

    Heh.

    daleyrocks (d9ec17) — 6/19/2008 @ 6:41 am

77. An amazing amount of misrepresentation and outright lying going on here, and it seems to be almost uniformly signed "Sanai".

    SPQR (26be8b) — 6/19/2008 @ 10:47 am

78. Sorry to disagree, daleyrocks. Abuse of the legal process is when three Atlanta cops plant marijuana on the body of the 92-year old woman they murdered.

    What Cyrus is doing is trying to play a piano piece on a violin, in my opinion. That's not abuse. It's being zealous and creative. He may fail but … "Man's reach should exceed his grasp or what's a heaven for?"

    nk (4bb2be) — 6/19/2008 @ 11:07 am

79. nk and daleyrocks – Sorry to disagree with both of you, but I have no sympathy for any of the parties in this.

    From Gianelli:
    Sanai is suing over a $2,400 rent dispute … then mushroomed into a 7 year long legal battle royal in the state court libel action Sanai initiated.

    Does anyone not see how even the possibility of this occurring screams of a severe problem with the system?

    Our judicial system is currently causing all of its own problems.

    Apogee (366e8b) — 6/19/2008 @ 11:20 am

80. Dear Apogee: Don't blame the judicial system. The trial judge in that case awarded sanctions to the defense of over $1 million to reimburse the defendants for their defense costs and legal fees.

    Sanai is appealing that award, as he has a right to do.

    However, the point is that the "system" DOES act when its processes are (allegedly) abused.

    Stephen Gianelli (6ce4e5) — 6/19/2008 @ 12:29 pm

81. "That's not abuse. It's being zealous and creative."

nk – If you read through some of the judicial orders relating to his cases I think you might change your mind.

daleyrocks (d9ec17) — 6/19/2008 @ 12:59 pm

82. Mr. Gianelli – Thank you for the nice response. I would still beg to differ.

    A simple paperwork error involving a 2400.00 amount that was corrected shortly afterward is allowed to balloon into 7 years of frivolity and over a million dollars in costs. Even though the judge attempted to correct this gross error, Sanai still has a “right” to appeal it.

    If the appeal is denied and a judgment is ever actually awarded, you can bet that Sanai will be able to avoid payment by some other sort of legal obstruction. At that point, would the defense attorneys still attempt to collect from their client?

    Can you imagine this sort of thing in the medical field? “Yes, the patient died from blood-loss, but was buried with the necessary plasma after the error was discovered”

    There is an inherent problem in a system that requires you to have an extra million around to defend against a case that is eventually ruled absolutely baseless and abusive. (How else to explain over 1M in sanctions?)

    I hear jurists complain all the time about their caseload and lack of resources. IMO, they have nobody but themselves to blame.

    This case illustrates the fact that the system has put procedure above all else, to the point where actual merit is no longer possible to gauge. As the caseload grows, the temptation to avoid dealing with the problem (to the point of not actually reading the case files anymore) also grows exponentially. Again, I have no sympathy for such a self-fulfilling prophecy of self-destruction.

    Apogee (366e8b) — 6/19/2008 @ 3:28 pm

83. Dear Apogee —

    I hear what you are saying, but please keep in mind that it is the rare plaintiff indeed who spends 7 years of their live, and 5,000 hours of their time pressing a lawsuit to this point.

    In addition, I would hate to see a system where a truly damaged and wronged consumer could not bring their case to court due to an (alleged) abuse of the system by the very few.

    What would be your suggestion to screen out the bad cases/plaintiffs early on, and how could it be fairly implemented?

    Last, it sure seems from the outside looking in that Sania’s rent dispute got out of control, but we really know very little about the case. What about the off chance that he is right? It is possible, however remote it seems to us strangers to the case.

    Maybe all of these judges in a row were/are biased against him.

    Not likely, but still remotely possible.

    Stephen Gianelli (6ce4e5) — 6/19/2008 @ 4:18 pm

84. There may be a MUCH BIGGER story underlying Hon. Judge Kozinski’s computer faux pas that the LA times should be investigating — namely, Judge Kozinski’s disabling (breach) of the Federal Courts’ National computer Security System. As I understand it, from reading the letter from former AOC Director Meacham, posted on HowAppealing, Judge Kozinski’s disablement of the Federal Courts’ Computer System directly affected the 9th, 8th, and 10th Circuits, and allowed potential hackers to hack into ANY FEDERAL COURT RECORDS IN THE UNITED STATES.

    Given the juror e-mail undermining of the Scrushy trial in the 11th Circuit, together with “AnnTM” and her co-participants’ admissions that “AnnTM,” while clerk for an 11th Circuit Court of Appeal Judge, used Federal Court computers to pass extrinsic ex parte evidence on blogs and by e-mails to obstruct and influence the outcome of an autistic ADA civil rights plaintiff’s cases in the 11th Circuit with, in part, confidential information obtained from the

9th Circuit Court of Appeals about that plaintiff's cases previously heard by the 9th Circuit, …

what we REALLY need is a BIG INVESTIGATION into whether Hon. Judge Kozinski's Federal Courts Computer System disablement breach has been exploited to undermine numerous cases throughout the Federal Courts system throughout the United States, and …

whether Judge Kozinski's disablement (breach) of the Nation's Federal Judiciary Computer System was done not only to allow download of porn and MP3 files, but also Federal Court judges, employees, law clerks, and staff to blog on legal blogs to boost readership and advertising income (of those with an ownership interest in such blogs) from Federal Courts while at work on Federal computers.

Query, what the readership wants to know:
1. Did the USAO and other private civil defense attorneys learn about and exploit Judge Kozinski's Federal Courts System Computer breach to influence our Federal judges in an outcome determinative manner in Federal Court cases undetected by their opponents?
2. Did the Federal Courts Computer Security System that was breached lock out judges, employees, law clerks, and staff from even sending and receiving outside e-mails and going to outside blogs, thereby did the breach allow such extrinsic ex parte evidence passing outside the Federal Court record to go undetected in a Due Process sense from litigants in our Nation's Federal Courts in numerous cases?
3. Who was the computer genius smart enough to figure out how to disabled and breach an entire Nation's Federal Court's Computer System?
4. And did that computer genius have an ownership interest in a popular legal blog, clerk for Kozinski, and sit on a Presidential candidate's Federal Judge Selection Committee?
Both the LA Times, and Congress, need to open a BIG INVESTIGATION into this MUCH BIGGER apparent story of how the integrity and impartiality of our Nation's Federal Courts and our National Security may have been undermined.

Remember, to become a President, one must be a born American citizen.

To become a Federal Judge with power over a President, one does NOT need to be a born American citizen.

The integrity of our Federal Judiciary and its computer system is of paramount and vital National Security interest.

If a handful of cases can be compromised because no one in the Federal Judiciary is monitoring the travel destination and content of e-mails and blog posts coming from Federal Court computers used by judges, employees, law clerks, and staff POST-the Kozinski Federal Courts Computer System Security disablement (breach), then …

WHAT OTHER CASES ARE BEING COMPROMISED, IN WHAT CIRCUITS ARE SUCH CASES LOCATED, AND OF WHAT IMPORTANCE TO OUR NATIONAL INTERESTS ARE THESE CASES?

What if the post 9-11 zeal we have seen of those like Yoo and the surveillance of almost every American has been covertly carried on through a Security breach of our Nation's Federal Courts Systems Computers?

What one of YOU would want to have a case pending in a Federal Court under such circumstances, whereby fairness, impartiality, and even your very "day in court" might have been compromised?

This is the BIG STORY — we need a congressional and Special Prosecutor INVESTIGATION more far- reaching to look into MORE than merely Judge Kozinski's personal computer server.

Deep Throat (b5fadf) — **6/19/2008 @ 11:37 pm**

85. Deep Throat, did you hear that fire cannot melt steel, which means 9/11 was an inside job?

daleyrocks (d9ec17) — **6/19/2008 @ 11:53 pm**

86. I am interested in the story about the disconnection of the firewall. I haven't had time or energy to go into it in depth, but it's fascinating. I've been meaning to post Mecham's letter.

Patterico (cb443b) — **6/20/2008 @ 12:00 am**

87. Mr. Gianelli #83 – Again, thank you for your response.

As to your “rare plaintiff” assertion, it should be noted that this “plaintiff” is in reality a lawyer. The relevance of this is the illustration of the capability to game the system by insiders. Just as law enforcement is held to a higher standard with respect to criminal behavior, so should an attorney be held to a higher standard of merit when he is representing himself.

I know of several situations whereby lawyers partner with unscrupulous cons to game the system and use its abusive and expensive process to extort money from defendants. These defendants have no possibility of holding off payment, as the deference to procedure obliterates common sense or even legal precedent. To resist is to pay, with unbelievably low chances of recovering damages or legal fees.

As to the truly damaged consumer, one should expect that the plaintiffs claims would contain merit, and if not, then is there actually a damaged consumer? The lack of a built-in method to determine merit does the damaged consumer no good, as he or she is invariably faced with an “overworked and time-stressed” jurist. The overload of course due to the absence of a proper sorting method to remove the fodder in a timely fashion.

Again, this almost obsessive-compulsive reliance on procedure is a problem because it never ends. There is no point built into the system where procedure stops and the actual merits of the case are examined, with the express purpose of a safety valve to remove frivolous and baseless argument. This may exist in theory, but theory has nothing to do with court function. In function, the entire emphasis is on playing “whack-a-mole” with both plaintiff and defendant in the hopes of causing them to buckle. It does nothing to address the problems at hand.

When I make this statement, I’m met with protestations of “we really know very little about the case.” But the problem is that the *jurist* also takes that position because it is the safe one. As long as enough paperwork is generated and money spent, there can be no charges of hasty, improper decisions.

The flip side of this arrangement is the absence of charges of improper decisions due to sloth or lack of merit. So the whole process lengthens for no reason, and the court system becomes overloaded. Players gaming the system count on this, and are rarely disappointed.

What’s my solution? How about a phase introduced whereby merit is assessed, without procedural interference – meaning no objections or interruptions. It would of course be open to appeal, but that bar would be necessarily higher, as cases dismissed as without merit would have to argue merit for reinstatement, and merit should have some base in established precedent.

Apogee (366e8b) — **6/20/2008 @ 3:14 am**

88. Apogee – Thanks for your comments. Under Judges Grimes and Green, Danai lost on the merits both times. In Judge Grimes’s order he states that Sanai admitted in a deposition that his claims had no merit and were brought for the sole purpose of harassment. Sanai is able to prolong the litigation as you suggest merely through technicalities and the prospect of his recovery of fees for his time forces the opposition to respond.

daleyrocks (d9ec17) — **6/20/2008 @ 6:35 am**

89. “What’s my solution? How about a phase introduced whereby merit is assessed, without procedural interference – meaning no objections or interruptions.”

Unfortunately, the merits of a case can only be assessed based on admissible evidence—which evidentiary objections are essential–especially for the defense–to preserve fairness.

In addition, the parties have a right to conduct discovery to bolster their claims.

For truly meritless cases there do exist summary procedures that can be invoked early on in a lawsuit.

Where the claim is bogus on its face, the defendant can file a demurer.

Where the plaintiff does not have ANY evidence to back up his claim, a motion for summary judgment.

And if the suit arises out of a prior exercise of a defendant's free speech or right to petition, there is the California anti-SLAPP statute.

Finally, the possibility of sanctions (like those assessed against Sanai, and which are being appealed), serve to deter most bogus claims.

Stephen Gianelli (6ce4e5) — 6/20/2008 @ 4:51 pm

90. Mr. Gianelli – Thanks for spelling out these options.

    I know and understand the existence of summary judgment and demurer. I believe these are quite rare, due to my previously mentioned invocation of "safety jurist", more commonly known as CYA. The rarity speaks, IMO to the need for a corresponding CYA in order to get those decisions right, which would then result in less work for all concerned.

    As for the preservation of fairness – the grudge and outright hostility by the court shown those daring to self-represent in these bogus, shakedown lawsuits renders the "fairness" objective about as serious as a politicians promise.

    I understand the need for fair play, but the preservation of fairness cannot result in apoplexy. The system is already dismissed as hopeless by many, and gamed by just as many. It will continue to deteriorate until accountability is restored. "Don't do the crime if you can't do the time" should also read "those who sit in judgment must accept judgment for their actions."

    Apogee (366e8b) — 6/20/2008 @ 11:44 pm

91. Out of curiousity, do other states have provisions through which lawyers can essentially make a living by bringing actions representing themselves under the type of asymmetrical litigation theories Sanai was relying with UDR case and recovering fees for their efforts as pro se litigants, assuming they eventually prevail or settle?

    daleyrocks (d9ec17) — 6/21/2008 @ 7:11 am

92. The federal government does. That's why we see all those ACLU suits. They only have to win on one civil rights question to get their fees for the other 49 they lost on. Same thing with ADA although that collusion is more likely to be punished. Some ADA lawyers do continue to hunt down palintiffs and causes of action. Patterico wrote about one last year, here, where the court barred further suits without first obtaining the court's permission.

    nk (d86adb) — 6/21/2008 @ 7:27 am

93. Ok, not exactly on point but close.

    nk (d86adb) — 6/21/2008 @ 7:28 am

94. nk – Those aren't pro se cases, are they?

    daleyrocks (d9ec17) — 6/21/2008 @ 7:37 am

95. No, not strictly speaking. Only in the sense that it is the lawyers who really initiate them and not a genuinely aggrieved plaintiff and they are fueled by the expectation of attorneys' fees and not the relief which may be obtained.

    In Illinois, attorneys' fees are the rare exception. They are not granted in most cases. Not even costs outside court filing fees. I know of no situation where a pro se litigant can get attorneys' fees.

    nk (d86adb) — 6/21/2008 @ 8:00 am

96. Thanks nk. I agree that the ACLU has got a great scam going in terms of scaring defendants into settlements and then recovering fees. Small municipalities and school boards can’t afford the prospect of protracted litigation so they make the perfect victims.

    daleyrocks (d9ec17) — 6/21/2008 @ 8:05 am

97. RE: Comment on the Letter of the judge’s WIFE visa via the one(CA Esquire) she views as the pest:
    On attorney Sanai, and the judge’s wife, and their parallel Southern CAL universal dispute, the judge’s wife makes it sound like Mr Sanai broke into their personal computer, and stole files. See judge Alex’s wife’s letter to this WWWW, a most curious item.
    Lets now hope, if one uses googles, and gets info(OFF THE WWW), that is not now a separate federal offense–if it miffs off the powerful, and thier cozy cliques. It would be like the CHINA Commie WWW standard, Microsoft redux.
    The wife’s judge was doing some heavy lifting, and bringing up some interesting points, until she then threw in the matters that made it sound like stealing personal files, was at the heart of the matters.(the Beef to then target that person she and the judge view as a pest–will that not lead to the 3rd Circuit buying into that ??)
    Like any can note: Harold Fine was not a KING’S MAN, not some Hollywood, fictional dude..
    Was it all a big joke, all the hate heaped on him by several 9th Circuit jokers.(facts cast to the Santa Anna winds)
    Congress should look at that…(indeed it may be an issue)
    I don’t care if Alex and his wife have some strange drawings, photos, jokes, etc on some WWW site, or with their grown kid, or some of their kinky buddies, if it does not create a bias to Alex doing his judging job as to ordinary citizens who appear before the 9th Circuit, via some attorneys—if he can be fair and impartial etc…(You know take his judging seriously in the USA, even as to ordinary citizens) But, Congress(the Senate of the USA) should really care when the 9th Circuit is used as a cult of hate to dehumanize people, concocting misinformation, as if it is all just some joke;(some big Ha Ha)
    A joke on the Nation to favor large OIl Company/ Corporations, & running favors for them is not really a joking matter, it is a shocking travesty.
    How would Alex feel(or his wife, who seems like she would be a better judge) if the 3rd Circuit in judging him did not refer to him as Judge Kozinski, but cloned some names, like the Larry Flynt of the Chamber of Horrors, and then went into “imagine”, and concocting some things to make him look like the devil, and then used some more names(other than his real name), like Humpty Dumpty.
    That is exactly what happened when Alex ruled for Chevron OIL to bar a suit(vectoring off of Stephen Trott), and then dumped all over a regular citizen, with Stepthen Trott, and another ex DOJ official.(see, U S Ex rel Fine v Chevron(9th Circuit 1995)–a real porno exercise from the 9th Circuit Chambers. A ax job, that will stand as a disgrace, as bad as Justice Taney in the Dredd Scott matter.

    Mitch (56a0a8) — 6/21/2008 @ 11:35 am

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