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In Defense of the Prominent and Plagued

Mark Holscher Has Become a Lawyer Of Choice for Public Figures in Trouble

By **John Roemer**
Daily Journal Staff Writer

Prominent men in trouble often turn to Mark C. Holscher, and Alex Kozinski is one of them.

The 9th U.S. Circuit Court of Appeals' chief judge is in the crosshairs of a judicial misconduct inquiry following the exposure in mid-June of sexually explicit photos on his Web site, alex.kozinski.com.

Kozinski lawyered up a few days later by calling Holscher, 45, a Kirkland & Ellis partner who keeps offices in Los Angeles and San Francisco. Holscher will deal with the attorneys for a five-judge committee from the Philadelphia-based 3rd Circuit assigned to investigate Kozinski's conduct. The committee has given no indication of when it will rule.

Kozinski tops a blue chip list of clients on a Holscher résumé that features accused nuclear spy Wen Ho Lee, Enron CEO Jeffrey Skilling, disgraced Rep. Randy "Duke" Cunningham, former Peregrine Systems President Gary Lee Lenz and wealthy Los Angeles investor and Société Générale board member Robert A. Day.

Currently Holscher is defending the California Institute of Technology's Jet Propulsion Laboratory in a beef by scientists there challenging new national security background checks. Dan Stormer, of Pasadena's Hadsell & Stormer, represents the scientists. In January, Stormer persuaded the 9th Circuit to preliminarily halt the checks while the case proceeds.

"For a young guy, he's bright and extremely talented," Stormer said of Holscher. "He's pleasant as an adversary. He knows how to be very vigorous in his defense without getting personal."

After Kozinski retained Holscher, one of Holscher's early phone calls was to noted Houston criminal defense lawyer Ronald G. Woods. Holscher got to know Woods well when both men were part of the Skilling defense team.



Mark Holscher of Kirkland & Ellis LLP.

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Holscher also knew that the 5th Circuit had retained Woods as its special investigator in a judicial misconduct probe of U.S. District Judge G. Thomas Porteous Jr. of New Orleans on perjury and bribery charges. As a result of the investigation, the 5th Circuit has publicly reprimanded Porteous and suggested Congress impeach him.

"Mark called to ask about the procedures in a misconduct investigation," Woods said last week.

"I think Judge Kozinski chose wisely."

The Kozinski probe will likely focus on whether he violated Canon 2A of the federal judiciary's Code of Conduct. That part of the code requires that a "judge must avoid all impropriety and appearance of impropriety" in "both the professional and personal conduct of a judge."

News of the photos caused Kozinski to declare a mistrial in a high-profile Los Angeles pornography prosecution he was hearing as an assigned judge.

Holscher declined to discuss his work for Kozinski, though he answered questions about other aspects of his career. Kozinski

did not respond to a request for comment on Holscher. His silence is a sign Holscher is doing his job, said one lawyer who has known him for years.

Laurie L. Levenson is a Loyola Law School professor who had a chance to observe Holscher early in his career, when both were federal prosecutors in Los Angeles, in the late 1980s and early 1990s. She said Holscher has already accomplished his first task in defending a well-known public figure.

"He got client control, and it's not that easy," Levenson said. "He got Kozinski to stop talking, to stop defending himself."

When the Web site photos first surfaced in June, Kozinski — before he retained Holscher — sought to deflect responsibility.

He initially blamed family members. "It's a server maintained by my son, Yale, available to the entire family," Kozinski wrote in an e-mail response to the Daily Journal's questions. "Pictures, documents, other items of personal and family interest."

No similar comments were forthcoming once Holscher took over.

A Defender of Plagued Prominent Figures

An attorney friend of Holscher's called him an extraordinary trial lawyer but, requesting anonymity to avoid giving offense, questioned Kozinski's choice.

"I was shocked he retained a white collar defense guy," the attorney said. "He really needed an elder statesman, a [former solicitor general] Ted Olson, someone who would command the respect of the 3rd Circuit committee."

Paul B. Meltzer, a Santa Cruz lawyer, represented U.S. District Judge Robert P. Aguilar of San Jose in his successful appeal from two 1990 criminal convictions for disclosing a wiretap and obstruction of justice.

Meltzer said representing a federal judge poses challenges.

"Judges tend to have strong views, and you get a lot of feedback," he said. "You have to do a fair amount of listening. But in this case Judge Kozinski has made a good choice. I'm a fan of Holscher's work."

In 2001, Holscher failed in a bid to become U.S. attorney in Los Angeles. The plum post went to then Los Angeles County Superior Court Judge Debra Wong Yang. Holscher, a Republican, has been mentioned as a candidate for the job at other times when it was available, but so far has struck out.

At the U.S. attorney's office Holscher came across as a forceful prosecutor who went after Hollywood Madam Heidi Fleiss for tax evasion and money laundering. He worked to put Fleiss behind bars in a bare-knuckles jury trial featuring defense lawyer Robert C. Bonner of Gibson Dunn & Crutcher.

Bonner, who could not be reached for comment, is a former federal judge and Drug Enforcement Administration chieftain who became U.S. attorney in Los Angeles in 1984. He hired Holscher to serve in the office in 1989 before leaving federal service and switching to defense.

By 1995, Bonner and Holscher were opposing counsel. In the courtroom, they clashed over the government's treatment of Fleiss's sister Shana, a government witness with a drug problem. When Bonner suggested prosecutorial pressure probably worsened Shana's condition, Holscher was incensed.

He leapt to his feet at the prosecutor's

table, shouting, "Don't you ever accuse me of that!"

Recently Holscher recalled the scene. "We worked with her lawyer to get her into a drug treatment facility," he said of Shana Fleiss. "The only reason Shana had to testify was because Heidi Fleiss rejected a very lenient plea offer. I objected strongly to the [Bonner] comment because it was false. High stakes criminal trials can get heated, and that was one of those times."

Fleiss was sentenced to 37 months. When Holscher moved from the prosecution ranks to a defense role at O'Melveny & Myers in 1995, Fleiss gave him a going away present: a t-shirt with her image on it, which she inscribed, "To the biggest prick I ever met."

Miriam A. Krinsky was the chief of criminal appeals at the U.S. attorney's office in Los Angeles while Holscher worked there. "He's an incredibly skilled trial lawyer," she said recently. "His presence is immediately felt when he walks into court. He was always a very tenacious and aggressive prosecutor who uncovered every stone."

"He's not a pure legal eagle. His strength is not to think about the law but to use it. My impression is that he's brought that zeal to his practice on the defense end. Mark is as good as it gets."

Holscher was born in Inglewood to an aerospace engineer father and a schoolteacher mother. They raised him and four siblings in Playa del Rey. Holscher now lives in Pacific Palisades with his wife Kelly, an educational book developer, and their three children. He studied law at the University of California School of Law at Berkeley and joined the State Bar in 1989.

At O'Melveny, and later at Kirkland, Holscher joined an elite cadre of white-collar defense lawyers with a client list ripped from the headlines. When Jeffrey Skilling was indicted on multiple felony charges connected to Enron's collapse, Holscher hit the road for the 2006 trial.

"Trying the Skilling case was a brutal experience," he said. "I was in Houston for seven months straight, with less than a week back at home with my wife and three kids."

Some questioned why, after Holscher and others did much of the prep work,

O'Melveny brought on high-profile partner Daniel Petrocelli as lead trial counsel, despite his lack of criminal experience. Woods, the Houston lawyer retained as Skilling's local counsel, said he saw no sign of discord between Holscher and Petrocelli. Petrocelli did not return a call seeking comment.

Holscher said it was no problem.

"Dan Petrocelli was our lead, and frankly I thought he did a great job in the trial - much better than many white collar specialists expected," he said.

Despite their efforts, Skilling was convicted on 19 of 28 counts and is serving a 24-year sentence.

Holscher moved to Kirkland & Ellis in 2007, as part of the firm's bid to amp up its California defense team. "I went to Kirkland because it is a fantastic opportunity to help build a national white-collar practice and to work with my good friend Jeff Sinek, who was the best man at my wedding," Holscher said.

The Wen Ho Lee case is arguably Holscher's masterpiece, and one he worked pro bono following a cry for help from Lee's family. Holscher's maneuvers led to perceptions that Lee was a racial profiling victim and the target of selective prosecution. Holscher also took the hazardous step of countering heavy government pressure and negative media reports by putting his client on "60 Minutes."

In the end Lee pleaded guilty to greatly reduced charges, won an apology from the judge and — after nine months in pretrial solitary confinement — was sentenced to time served.

"In 1999, there was false paranoia in the United States that China had infiltrated the U.S. with hundreds of spies," Holscher recalled. "There was pressure on the Department of Justice to indict Wen Ho Lee on death penalty espionage offenses. Given that intense pressure, I took the risk of putting him and his family on with Mike Wallace to tell his side of the story."

Holscher sat just off-camera to make sure the interview resulted in no damaging admissions.

"Fortunately, Wallace became convinced that Lee had been unfairly targeted, and that interview helped turn the tide," Holscher said.