

DO BLOGGERS SUCK OR DOES TRADMED JUST SUCK MORE?

Above the Law, reporting on a speech 9th Circuit Court Chief Judge Alex Kozinski gave at Fordham Law, summarized his argument as, “A New Argument in Favor of Cameras in the Courtroom: Bloggers Suck.”

Now, for the record, I’m all in favor of cameras in the courtroom and have long been, particularly once I discovered that TradMed journalists look for different things at hearings than I do. And particularly today, as I’m deciding whether I have time to get to the closing arguments in *Perry v. Schwarzenegger*, drink some beers with bmaz, and be back here in time to drive to Syracuse for my mom’s 70th, I’d love the option of sitting at home and streaming the trial (though beers with bmaz might still win the day).

But I wanted to look more closely at the argument Kozinski seems to be making (assuming, of course, that the blogger at Above the Law competently replicated it, because there’s always the possibility he’s just being loud and biased).

Kozinski started his talk by going over some of the arguments he has made before [PDF] in support of cameras (e.g., studies show cameras don’t affect the proceedings, quoting his “old boss” Warren Burger – “People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.”).

It wouldn’t be like the O.J. trial, which decidedly set the cameras-in-the-courtroom movement back. Kozinski advocates stationary cameras that would not zoom in, zoom out, or otherwise

overly dramatize the courtroom events. Kozinski acknowledged that if you were to choose between a O.J. media circus or reports from informed journalists like Nina Totenberg or Linda Greenhouse, one might be happy to live without cameras.

But that's not usually the choice one has. Kozinski pointed to the "long, slow decline of the newspaper industry" and the "rise of a much more diffuse style of coverage" as a major reason why cameras should be brought into courtrooms. Increasingly, the public is relying on "pseudo-journalists" (aka bloggers) for their instantaneous legal news.

"On the Internet, the loudest voice gets the most attention," said Kozinski, who said that tends to lead to a distortion of the coverage of a case. He also raised the risks of relying on unknown bloggers, pointing to the case of "Dr. Flea."

[snip]

"The days of obscurity for judges and reliable, informed journalists are gone and gone forever," said Kozinski. "If courts don't change with the times, change will be forced upon them."

Kozinski's arguing, apparently, that we need cameras in the courtroom because trials are no longer covered with the skill that Nina Totenberg and Linda Greenhouse bring to their work. Furthermore, Kozinski seems to be arguing, the public is fooled into following "loud" chroniclers of trials, rather than competent ones. And, it seems, Kozinski believes readers (the blogger here doesn't specify what kind of reader) risk ... something ... if they rely on pseudonymous bloggers.

As some of you no doubt recall, a blog named "FireDogLake" actually once covered a trial—the

Scooter Libby trial—also covered by Nina Totenberg. FDL's coverage was undoubtedly biased and at times even delved into heavy snark (since then, in fact, one of the bloggers has developed a bit of a reputation for a potty mouth). Nevertheless, FDL's liveblog—written under the pseudonyms "emptywheel," "Swopa," and "Pachacutec"—became the standard "instantaneous" news from the trial. Two of the TradMed journalists in the courtroom—including one whose beat was the Court—followed the stream, not to mention an unknown number of journalists who chose to stay away from the court house and follow along the thread. The General Counsel for the Washington Post chose to follow FDL's liveblog, rather than the superb work of Washington Post reporter Carol Leonnig, because with five reporters testifying in the trial, he needed up-to-the-minute near transcription rather than twice-daily analysis of the events. When it was all said and done, Jay Rosen declared that in most categories of coverage "FDL was tops." I assume Rosen even considered Nina Totenberg's coverage of the trial when he said that.

Six months after the trial, at a conference on media coverage of trials, Judge Reggie Walton was asked what it was like having all those loud biased bloggers in his courtroom. Rather than saying they made the trial more unruly—which seemed to be the answer those present at the conference seemed to expect—Walton said that the bloggers were "more thorough" than the TradMed reporters.

Perhaps Judge Kozinski should ask Judge Walton whether bloggers suck?

Or perhaps he should just review the coverage that came out of the trial that raised this whole issue, *Perry v. Schwarzenegger*, to see whether bloggers suck? FDL's and Courage Campaign's coverage of the trial was undoubtedly biased. Many of those live-blogging the trial stand to win a key civil right if the plaintiffs win this trial. But that also meant they knew

the trial and the players better than some of the TradMed types covering the trial. And, as happened with the Scooter Libby trial, after cross-checking the FDL, Courage Campaign, and #Prop8 Twitter feeds with their own observation on the trial, a number of TradMed types figured they could stay away and just follow along the liveblogs and Twitter (and get some well-informed analysis along the way).

But the relatively greater quality from the sucky bloggers in these two trials is not, actually, a reflection on the decline of the newspaper industry (though the imperative to forgo live coverage for following our feeds may reflect cost considerations of the declining newspaper industry). Rather, we just came into trials and did something different, something that didn't fit into the narrowly prescribed genres of the declining newspaper industry. And that different thing—"instantaneous" coverage of a trial, however rough—turned out to have great value to both other journalists and the general public (not to mention the lawyers involved in the trials). Yeah, maybe that entailed "forcing change" on the courts (though both seemed quite happy to have the transparency), but it was all in service of the same goals as Kozinski espouses.

But that's why blogging should be regarded as a necessary interim step toward cameras in the courtroom, rather than one big reason for their urgent necessity. We already have excellent live coverage of big trials and, if anything, that coverage has served only to focus more attention on the actual arguments in the court room rather than the theatrics that tend to fail when exposed to a wider audience. And, along the way, a big number of citizens learned not only about the judicial process, but also about the arguments made inside that process. As it turned out, that live coverage didn't bring down the entire judicial system.

The argument should be that bloggers prove that instantaneous coverage of trials won't hurt the

judicial process, not that we have to get cameras because bloggers hurt the process.