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Litigation
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LITIGATING HISTORY

WESTLAW LAWPRAC INDEX

JUD -- Judicial Management, Process & Selection

The Bush-Gore litigation swept into Florida like a hurricane, forming without warning and gaining rapidly in both size and intensity. I was retained by the Bush campaign on November 8, 2000, the day after the election, to act as lead counsel for the Florida litigation. By the following night, nine lawsuits had been filed; Warren Christopher was on his way to Tallahassee to act as Gore's spokesman; and it was reported that Gore had engaged the services of David Boies, the attorney who had recently gained national attention by beating Microsoft at trial.

The Bush team was beginning to realize that Gore intended to make a serious stand in Florida, and we anticipated a pitched battle. No one that evening, however, expected that the battle would become as involved or take as long as it did. Over the next 34 days, 45 lawsuits would be filed in 12 cities; the names of 53 judges and 192 lawyers would be inscribed in the history books; and Tallahassee, a quiet college town, would become the center of the world.

The Factor of Time

It is arguable that the most important factor in the litigation was not lawyers or judges, but time. After the Tilden-Hayes presidential election in 1876, four states each sent competing delegations to the electoral college. The dispute languished in a deadlocked Congress until four months after the election. In the aftermath, Congress enacted what is now codified as Article III, Section 5 of the U.S. Code. The provision states, in essence, that if a state finally determines any controversy concerning the Selection of presidential electors at least

six days prior to the meeting of the electoral college, such determination is conclusive and the delegation so selected is beyond congressional challenge. In the year 2000, six days prior to the electoral college meeting was December 12. The running of the clock toward that date would have a continuing impact upon the strategic thinking of the litigants.

The Forgotten Case

The first skirmish in the 2000 litigation actually occurred two weeks before election day in a case that drew little attention but could have decided the presidency. The Republican Party of Florida had sent a mailing to all registered Republicans in the state informing them of the ability to vote absentee. The mailings enclosed an absentee ballot application and a letter from the governor of Florida, George W. Bush's brother Jeb. The letter bore what appeared to be a depiction of the state seal.

The Democratic Party of Florida filed a suit, in which I defended Jeb Bush, claiming that the letters violated a state statute that prohibited the use of the state seal for political purposes. Among the relief sought was invalidation of all absentee ballot applications sent with the mailing. Had the case been successful, there would not have been sufficient time for persons who had sent back the applications to be notified of the invalidation, receive and return new applications, and receive and return the ballots before the absentee voting deadline. Bush led Gore in Florida by 739 absentee ballots statewide, well in excess of his total 327 vote lead after the final machine count. Had the Democrats won the suit, Gore might well have received Florida's electoral votes and become president.

As it turned out, the circuit court agreed with Jeb Bush's position that the statute upon which the Democratic Party was relying did not give rise to a private right of action. The case was dismissed, and there was no appeal.

The Opening Move

Florida law establishes two methods for a candidate to challenge election results. Before the winner is certified, a candidate can file a protest and request that one or more county canvassing boards conduct a manual recount. As an alternative, a candidate can wait until after the winner has been certified, bypass the canvassing boards, and file an election contest in the circuit court.

The Gore team chose to file a pre-certification protest. It ***9** was not a simple decision. The primary advantage of a protest was controllability: A protestor could choose the counties to recount and would likely have more influence over the standards used by canvassing boards

than over the decision of any court. The primary disadvantage of a protest was time: If the recount tipped the election in favor of Gore, Bush would have the right to file a contest that might remain unresolved on December 12. In that case, the Selection of Florida's electors would be thrown to the state legislature and Congress, both of which were under Republican control. The final decision was reportedly made by Gore himself, based upon a concern that if he filed suit after Bush was certified the winner, he would appear to be trying to frustrate the will of the people.

Gore requested recounts in only four of Florida's 67 counties. It is likely that the Gore team was receiving the same advice from its statisticians that we were receiving from ours: In a statewide recount, the winner was anybody's guess.

The counties chosen by Gore shared two factors. The machine tally had given Gore a margin of victory in each, and each had a relatively high number of machine-rejected ballots from which Gore might draw additional votes. The decision to file a protest would result in three hearings and delay certification from November 14 to November 26, a loss of 12 days.

The Bush Team Counters

The Bush team made two early strategic decisions. The first was to oppose all manual recounts. Several considerations led to the decision. First, recounts served only Gore's interests. Bush had won Florida, albeit by a slim margin, and there was no reason to give Gore a chance to upset the status quo. Second, the Bush team did not trust Florida's canvassing boards, many of which were dominated by Democrats. Finally, several of us truly believed that the manual recount procedures set out in Florida's statutes were inherently unfair and constitutionally flawed. Bush could have responded by requesting recounts in counties where he had enjoyed a substantial margin of victory, but such a request would have been inconsistent with our argument that the recounts were unfair and unconstitutional. The same considerations led to a decision to file suit in an effort to stop the recounts.

The second significant strategic decision was to file in federal rather than state court. Our first reason was a simple, logistical one: Each of the four counties in which Gore requested recounts was in a different circuit, and Florida venue requirements would have necessitated the filing of four separate suits, a cumbersome procedure with the prospect of inconsistent decisions. On the other hand, three of the four counties were in the same federal district, and we could name the boards of such counties in a single federal action. The second reason for the federal court filing was that the Bush political camp was not comfortable with the state courts and was unwilling to place all of its legal eggs in the state Judicial basket.

The U.S. District Court dismissed the suit, and the Eleventh Circuit agreed to hear an expedited appeal en banc. The appeal was later abated to await completion of the state litigation. Even in its dormant posture, however, it influenced our decision not to raise federal due process and equal protection issues in the state court proceedings. The Eleventh Circuit appeal was available as a matter of right, and the initial agreement to hear it en banc was a hopeful sign. If the Florida Supreme Court, however, had ruled upon the federal issues, the Eleventh Circuit would not have been able to consider them further. Only the U.S. Supreme Court can review a decision of a state high court under the *Rooker-Feldman* doctrine. At that point, we had no assurance that the U.S. Supreme Court would grant certiorari.

Getting Organized

The organizational demands of the 2000 presidential litigation were unlike those in any other case in history. It was not the number of cases or cities alone that made the litigation unique but also the speed at which it moved on so many fronts, the absence of precedent, and the surreal atmosphere that surrounded it. It was like playing a dozen chess games at once with the rules not revealed until after the moves were made, all in the middle of an Olympic-style media frenzy.

Every case was set immediately for emergency hearing, often within hours of filing. And every decision was appealed immediately to a Florida intermediate appellate court, which passed the case directly up to the Florida Supreme Court. Florida law permits an intermediate appellate court to catapult a case directly to the high court by certifying that the case involves a matter of great public importance requiring immediate resolution by the supreme court. Since 1954, 75 cases have been so certified, averaging fewer than two per year. During the 36 days of the presidential litigation, 41 were certified, though many had been consolidated before they reached the supreme court.

The Bush team made the decision to defend with a full-court press. We would intervene in every case in which Bush was not named as a defendant, and we would defend vigorously. (Gore, on the other hand, participated directly in only two of the 47 state court cases filed. The other 45 cases sought to have votes thrown out, and overt Gore support would have been inconsistent with his position that every vote should be counted.) The decision to defend all suits dictated our organizational approach. There was little time for decision by committee. Our organization was decentralized. Overall recount strategy was formulated by Ben Ginsberg, George Terwilliger, and former Secretary of State James Baker, all of whom worked out of the Republican state headquarters. Ted ***10** Olson spearheaded the federal litigation from his Washington office, and I managed the state cases from Greenberg Traurig's Tallahassee office.

Early on the morning of November 10, we set up our firm organizational structure. We designated my Tallahassee office as command center and assigned responsibility to attorneys and paralegals in all six of our offices throughout the state. Beginning that day, at least one of our attorneys monitored each counting canvassing board around the clock. The Bush campaign enlisted a dozen bright young lawyers from around the country to assist with brief writing. The briefing team was headquartered in a conference room at the Florida Republican Party headquarters and worked 24 hours a day. After several days, a number of the senior lawyers on the briefing team moved to our offices in order to work in a quieter atmosphere.

Because lawsuits were being filed against election officials without naming Bush as a defendant, we stationed paralegals in the clerk's office of every county in which litigation was likely to develop and made arrangements with the clerks to notify them if anything was filed involving the election. Motions were filed in out-of-town cases to transfer venue to Tallahassee, where we intended to seek consolidation. Eventually, most cases did end up in Tallahassee, but the consolidation plan was not successful. The circuit judges had met and decided not to consolidate in order to avoid overburdening a single judge.

The first major hearing took place in Palm Beach on November 15. Six judges had recused themselves before Judge Jorge LaBarga finally agreed to preside over a number of consolidated cases challenging the “butterfly” ballot. The plaintiffs' lawyers asked for an expedited trial on the merits. I anticipated that the issue would be tried on the merits somewhere, but I preferred not to have this done in Palm Beach County, the center of the most vociferous protests. In addition, a trial in Palm Beach would divert my attention from cases proceeding in Tallahassee. Judge LaBarga agreed that, before setting the case for trial, he would hear argument on the question whether there was a legal remedy even if the ballot were determined to be defective. He scheduled the hearing for November 17.

In any multijurisdictional litigation, even one on a normal timeline, one of the most difficult problems is consistency. In this instance, with dozens of cases all proceeding at lightning speed, there was no time to ensure that multiple lawyers would argue the same issues in different courtrooms from the same page. So I undertook to argue personally as many of the cases as possible. At the early stages, many of the hearings were in widely separated counties, often on the same day. Although every trial lawyer prefers to argue to a judge face to face, we elected to participate by telephone rather than risk inconsistency.

I argued the remedy issue to Judge LaBarga from my desk in Tallahassee and, immediately upon completing my argument, asked to be excused and rushed to an adjoining office to argue a change of venue motion in Broward County. Later that day, I argued a similar venue motion in Dade County, also by telephone. Several days later, Judge LaBarga would dismiss

all of the butterfly cases, a decision eventually unanimously affirmed by the Florida Supreme Court. We had weathered the first storm.

The First Trip to the Florida Supreme Court

Florida's statutory scheme for challenging election results was not well suited to the peculiarities of choosing presidential electors. Enacted in bits and pieces over a period of 154 years, it was anything but a model of clarity. It is unlikely that the drafters ever contemplated its application to the Selection of presidential electors, and there is no previously recorded interpretation of the provisions as applied to a statewide contest. As presented to the Florida Supreme Court in November 2000, it was a case of first impression.

Two separate, and apparently conflicting, statutes dealt with the date of submission of returns by the county canvassing boards to the Department of State. Both required that the returns be received by 5:00 p.m. on the seventh day after the election, in this case, November 14. One section, however, provided that, as of the deadline, all returns not received by the secretary of state "shall" be ignored, while the other section provided that such returns "may" be ignored. The secretary of state denied additional time for manual recounts. This was the position of the case when it reached the Florida Supreme Court.

Oral argument was set for November 20. The courtroom holds 264 spectators. The court had announced that it would open the doors to the public at 8:00 a.m. on a first-come, first-served basis. The line in front of the court began to form at 5:00 a.m. It was more like a rock concert than an appellate proceeding.

The courtroom itself is imposing. The ceiling is very high. The seven justices sit behind a bench raised several feet above floor level. On the walls above and facing the bench are several small openings with fixed, well-concealed video cameras. Florida was one of the first states to experiment with cameras in the courtroom in the 1970s, and the Florida Supreme Court now automatically videotapes all proceedings and sends a live signal to a public channel. On this day, they also sent the signal to the national broadcast media and a worldwide audience.

Boies argued the case for Gore. He had a simple message, which he pursued with dogged persistence: The statutory provision for canvassing boards to submit their returns to the secretary of state within seven days was not cast in stone; it was really a flexible date. The important thing was to ensure that the votes were properly counted, and the court had the power to extend the deadline to do so.

Ben Ginsberg had decided that Mike Carvin and I should split the Bush argument, and Mike was taking the rostrum first. The Chief Justice recognized Mike, and he stepped into

a hornet's nest. He barely got out two sentences when the questions began, and they never let up. Mike is an excellent lawyer, but he never had a chance. The justices fired 44 questions at him in 30 minutes. He was like a swimmer being dragged down by seven others. We were drowning in ***11** minutiae, and our message was going under.

It was clear that the court was not inclined to interpret the law in a manner that would favor Bush. If we had a chance of winning, it would be because we could convince the court that it did not have the authority to interpret the law. I was also concerned about countering Gore's argument that every vote should be counted with a technical statutory construction argument. I felt it was essential to ground our position in fundamental principle.

The principle asserted was separation of powers. We argued that the job of writing the rules for the election lies with the legislature because the Florida Constitution grants that authority exclusively to the legislature and, in the case of presidential electors, the U.S. Constitution does as well. The legislature, in turn, has given the job of administering the election laws exclusively to the secretary of state. Both by statute and by long-standing legal principles, the exercise of any discretion permitted by the election statutes, and the interpretation of any ambiguity in those statutes, falls to the secretary of state, and the courts' obligation is to defer to the decisions of the secretary unless they are clearly erroneous.

The supreme court was not convinced. It handed down its unanimous opinion the following day, ordering the manual recounts to continue and extending the deadline for submission of returns by canvassing boards for five days, until November 26. Ted Olson immediately filed a petition for certiorari in the U.S. Supreme Court.

Three Crucial Days

The three days following the supreme court ruling would set the stage for the final U.S. Supreme Court decision. By November 22, the Gore game plan was in trouble. A legal challenge to overseas military ballots had been resolved in Bush's favor, which had increased his lead to 930 votes. The Dade County Canvassing Board had completed only 1 percent of its count and was vacillating on whether or not to continue. Gore had been counting on its pool of 10,000 undervote ballots from which to slash Bush's lead. Meanwhile, Volusia County had completed its recount with scant impact on the result. In Palm Beach and Broward Counties, the recounted votes were tipping in Gore's favor but appeared insufficient to overtake Bush's lead.

The Gore legal team had to increase its chances of picking up votes on the recounts. Both the Palm Beach and Broward boards had adopted fairly conservative standards for reviewing the ballots. The ballots were punch cards on which a voter using a stylus would punch out

a small “chad” beside a candidate's name. Initially, the Palm Beach board counted a ballot only if a chad was sufficiently dislodged to allow light to be seen through the hole filled by the chad. As a result of a lawsuit filed by Gore supporters, Judge LaBarga ordered the board to begin considering the “totality of the circumstances” in reaching a decision on a ballot. The plaintiffs now returned to Judge LaBarga, charging that the board was failing to abide by his order and requesting him to order that it use a more liberal standard.

The issue was scheduled for hearing on November 22. The candidates were now battling for every vote, and the result of the hearing could be decisive. I appeared in person at the hearing before Judge LaBarga and argued that the board was using the proper standard. Judge LaBarga agreed and refused to intervene.

The following day the Dade County board voted not to continue counting. The Gore team filed a petition with the Third District Court of Appeal in Miami asking that the Dade canvassing board be ordered to resume counting. The court denied the petition immediately, and Gore again petitioned the Florida Supreme Court for review. The court unanimously denied the petition the following day.

The Gore team turned its attention to the only other county still counting, Broward. On November 24, Gore's counsel persuaded the board to adopt a liberal standard for counting ballots. The board decided to count as a vote any ballot on which any portion of a chad appeared to be dislodged, any dimple appeared in a chad, or any mark appeared on or beside a chad or a candidate's name. This proved to be a Pyrrhic victory.

During the November 20 argument before the Florida Supreme Court, Justice Barbara Pariente had asked Gore's ***12** counsel whether a variance in recount standards from one county to another would raise constitutional questions. Gore's counsel answered candidly that, if the variance were substantial, it could create constitutional problems. For that reason, they urged, it was important that the court set forth specific standards for the recounts.

Ultimately, the percentage of votes retrieved in Broward County, with its liberal standard, was 60 times the percentage retrieved in Palm Beach County, demonstrating a substantial variance. We can only assume that the Gore team, faced with a racing clock and diminishing options, elected to take a calculated risk. They would take the steps necessary to keep the effort alive and deal with the constitutional issue when its day arrived.

The Sauls Trial

The Gore team's decision to proceed under Florida's protest statute rather than file a post-certification election contest had cost 12 days. Only 16 days remained, and the Gore team

lost no time in filing its contest in the circuit court in Tallahassee. The case was assigned to Judge Sanders Sauls, a practical, no-nonsense judge with a Southern drawl and a sense of humor that he often uses to take the edge off court-room tension. This would be Gore's only chance to make an evidentiary showing that the results of the election had been materially skewed by flawed vote counting. The center of action had shifted back to Tallahassee, where four critical hearings, each with potentially decisive consequences, would take place over a six-day period.

Judge Sauls held a pre-trial conference on Tuesday, November 28. His purpose was to set a trial date and a pre-trial schedule for depositions and exchange of witness and exhibit lists. Gore's team attempted to convince the court to order that the recounting of ballots begin immediately and continue even as the trial was in progress. Judge Sauls declined.

The Gore team then argued that a contest proceeding called upon the court to conduct a de novo determination of how the votes had been cast, rendering the canvassing board's findings immaterial. The challengers relied upon a Florida Supreme Court case from the 1930s in which the trial court had decided an election contest case without looking at the ballots. The Florida Supreme Court had reversed, holding that the ballots themselves (fewer than 100 of which were in dispute in the case) were the best evidence of their validity, and remanded for the trial court to review them. The Gore camp asserted that the case stood for the proposition that the trial court in an election contest must review the ballots, and there was no reason for the court to take other evidence before doing so. Again, Judge Sauls refused.

But Gore's team was tenacious. At least, they urged, the court should hold a hearing prior to beginning trial to entertain argument whether or not a trial was necessary. The judge had already indicated that the trial would begin on Saturday morning and continue through the weekend. He consulted his calendar and suggested a hearing on Thursday to permit Gore's counsel to make this argument.

Up to this point, we had taken a low-key approach. The judge had been ruling in our favor, and it seemed prudent to save the dramatics for closing argument. Now, however, Gore's counsel appeared to be wearing the judge down. I leapt to my feet and into what became a widely distributed wire photo of David Boies and me in animated poses at the rostrum at the same time. “Mr. Boies is asking you to give him his relief before he has proved his right to relief,” I began. Gore's counsel had already asked for the counting to begin twice, and the judge had denied the request twice, and now they were asking a third time. If Gore's de novo theory were correct, any losing candidate could challenge all the ballots in any election, and the court would be required to begin counting all the ballots immediately. Why bother with a machine count in the first place, I argued. Why not just ship all the ballots to Tallahassee immediately after the election for the judge to count them?

My courtroom demeanor tends to be reserved, and I have never lost my temper in a hearing. But on this occasion I must have appeared quite agitated. One news report stated that I had "gone ballistic," and my wife told me that night that she thought I had gotten unusually agitated. I never get agitated in court, I told her, but sometimes it helps to appear that way. Whatever the reason, we got back on course. Judge Sauls announced that we would convene again on Saturday as planned, to begin trial. We were adjourned.

Gore filed an immediate petition to the Florida Supreme Court asking that Judge Sauls be ordered to start the recount immediately; for the second time, the court unanimously rejected Gore's petition.

Just prior to the Sauls trial, Ben Ginsberg added two of James Baker's senior partners, Irv Terrel and Daryl Bristow, ***13** and two other fine trial lawyers, Fred Bartlet and Philip Beck, to the team. Three critical cases were heading for trial at about the same time. There was a possibility that they would overlap, and we had to cover depositions, locate experts, and prepare witnesses.

We divided the case by issues, with Terrel, Bartlet, and Beck each handling particular witnesses. Bristow would attend depositions and work with me on the trials in Seminole and Martin Counties involving absentee ballot challenges. We agreed that I would present opening statement and closing argument and handle any legal arguments that arose in the course of the trial. We also put together our initial witness list, which consisted of 30 witnesses.

Some of the press concluded that the size of the list was evidence of dilatory intent. They were wrong. Delay was not part of our game plan, and Judge Sauls would not have permitted it anyway. The list was long because we had no idea what issues the Gore team intended to introduce, and we followed the time-honored tradition of listing every possible witness in order to avoid an objection by calling someone who had not been on the list. The day before trial, we pared our list down to 10.

The night before trial, we met in a large conference room in my office, along with George Terwilliger and several others, to review everyone's work and make final decisions on witnesses. The meeting was surprisingly short, lasting only about an hour. The only issue that required much discussion was whether or not to call Judge Charles Burton, the chairman of the Palm Beach County Canvassing Board, as a witness. There was some concern about his attitude because he had expressed strong dissatisfaction with the secretary of state's denial of the canvassing board's request for a several-hour extension. I favored calling him. He had given excellent testimony at the LaBarga hearing, and I wasn't concerned about his attitude.

My impression of him in Palm Beach was that he was an honest witness. Moreover, I felt that he would be defensive about the work the canvassing board had done under his chairmanship and was unlikely to say anything to suggest that they had not done a creditable job.

The morning of the Sauls trial, demonstrators set up camp facing each other on opposite sides of the road—the Bush supporters in front of the county courthouse and the Gore supporters in front of the capitol. Reporters and cameras were massed in the hallway leading to the courtroom, and the courtroom was standing room only.

The Gore team called two expert witnesses, one who discussed his opinion regarding potential problems with the punchcard voting machines, and a statistician who calculated the total number of votes that had been counted improperly statewide. Beck had deposed both witnesses and conducted a textbook cross-examination. The Gore team then stunned us, and presumably everyone else, by resting its case.

As surprising as the decision was at the time, in retrospect, it is not difficult to understand the reasoning behind it. As of that morning, there were only 10 days remaining until the final bell. The more witnesses they called, and the more issues they raised, the longer our defense would be. Whatever the decision by Judge Sauls, there would be an appeal, which would take additional time. The Gore team had apparently decided to rest its chances on the de novo argument, asserting that any evidence other than the ballots themselves was immaterial. Having failed to jump-start the counting before the trial began, they truncated their case, intending to end the trial as rapidly as possible and make their stand before the Florida Supreme Court.

We opened our case-in-chief with Judge Burton, at my suggestion. He had done a good job at the LaBarga hearing, describing the difficulty of truly discerning a voter's intent from the punchcard ballots and recounting the conscientious effort the canvassing board had made. I thought his window on reality would be a good counterpoint to what I regarded as speculative opinions by the Gore experts. We called the inventor of the punchcard voting device and our own statistician, as well as six other short witnesses. The inventor had been well prepared by Fred Bartlet, and Bartlet led him through his direct testimony smoothly. On cross-examination by Stephen Zack, however, he was tripped up twice.

First, Zack produced the original patent application on the machine, in which the witness had listed all possible problems that could be encountered during usage. Many sounded uncomfortably like those the dissatisfied voters were complaining about. Second, he expressed the opinion that in a close election, there should always be a manual recount to be on the safe side. The cross made good drama for the media but was not really relevant to our defense. Nevertheless, it gave a damaging appearance.

We made a last-minute decision to cut several witnesses. Their testimony added nothing significant to our case, and I believe it is a mistake to call a witness you don't need. Every minute a witness is on the stand, you are at risk of disaster, as was illustrated by the inventor.

Boies and I gave closing arguments Sunday night, and Judge Sauls read his ruling from the bench to a full courtroom on Monday afternoon. From our perspective, it was a grand slam. He resolved every factual and legal issue in our favor. The general consensus, probably shared by the Gore team, was that it would be a difficult ruling to overturn. Four days remained.

That same day, the U.S. Supreme Court issued an inconclusive ruling, remanding the Florida Supreme Court's November 21 decision for further explanation. The ruling would ultimately lead nowhere and become a footnote to history, but it was the subject of continuing speculation in the Bush camp—no doubt in the Gore camp as well—as to its intended message.

The Final Chapter

The final chapter in the drama began on December 6. Gore proponents filed lawsuits in Seminole and Martin Counties, seeking to have 25,000 absentee ballots invalidated due to alleged improprieties in the offices of the supervisors of elections. Bush had won the absentee ballot vote by more than 1,000 votes in each county. Because neither case involved a ***65** federal issue, there would be no basis for federal court involvement. A decision favorable to Gore in either case would make him president.

The assignment of the Seminole case to Judge Nikki Clark was extremely worrisome to most of the Bush camp. She had all the hallmarks of a judge who would be inclined to favor Gore. She is a Democrat who had been passed over by Governor Jeb Bush for appointment to the appellate bench several weeks earlier. The Bush campaign wanted to take no chances and urged me to file a motion to recuse her. I advised against it. She is a sharp, independent judge. I was confident that she would be objective. Two recusal motions were eventually filed, the only documents filed on behalf of Bush in the state litigation that did not bear my signature. Their fears, as I expected, were unfounded.

Judge Terry Lewis began the Martin County case at 8:00 a.m. and recessed an ***66** hour later to allow Judge Clark to begin the Seminole County case. When the Seminole case concluded at 7:00 p.m., Judge Lewis reconvened and continued until the plaintiffs rested, after midnight.

The next day (my wedding anniversary) was a busy day. I argued the appeal from the Sauls trial before the Florida Supreme Court at 9:00 a.m. and made the closing argument in the

Seminole case at 1:30 the same afternoon. Bristow simultaneously gave the Martin County closing.

The following day brought mixed greetings. The Seminole and Martin decisions came down in our favor, but in a surprising four to three decision, with two of the strongest dissenting opinions in its history, the Florida Supreme Court reversed Judge Sauls and ordered a statewide recount to begin immediately. The court did not, however, set specific uniform standards. The following morning, a Saturday, the U.S. Supreme Court issued an equally surprising stay and scheduled oral argument for Monday, December 11.

On December 12, it all ended as quickly as it had begun. The U.S. Supreme Court vacated the Florida Supreme Court order, with seven justices finding a violation of equal protection due to a lack of uniform standards in the conduct of manual recounts. The Court cited the disparity of standards used in Palm Beach and Broward Counties. Five justices agreed there was no remedy available to the state because December 12 had arrived. The same day, the Florida Supreme Court unanimously affirmed the Seminole and Martin decisions.

At 10:00 p.m. that evening, my wife and I sat before the television like many Americans, watching the flood-lit steps of the U.S. Supreme Court building. Television correspondents received the Supreme Court's lengthy opinions and tried desperately but unsuccessfully to decipher them. I called Bush headquarters. They were waiting anxiously for the decision to print slowly off the fax. I sat down at my computer, and, with my wife standing behind me, I located the opinion on the CNN Web site and skimmed through it to get to the holding. “It's over,” I said. After 36 days, 147 hours of continuous media coverage, and countless hearings, the 2000 presidential litigation was, literally, history.

Footnotes

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