How *Bush v. Gore* Changed Courts Across the World

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From the perspective of 20 years later, one of the most striking aspects of the *Bush v. Gore* cases is that they marked a major historical shift in how courts in the United States and around the world operate and, in particular, deal with the public. This shift was rooted in rapid advances in technology in the 1990s and the acceptance of the Internet as a means of transacting business and accomplishing communication. *Bush v. Gore* served as the main catalyst that brought these changes to the fore in a sudden, dramatic manner. In particular, five major factors dramatically affected Florida's 36-day election dispute in the fall of 2000 and ultimately forever changed courts.

After *Bush v. Gore*, the changes the Florida Supreme Court implemented or expanded during *Bush v. Gore* would become standard operating procedures for most courts. They would have major implications for the way courts around the world would operate as the Twenty-First Century progressed. But before *Bush v. Gore*, they were often viewed as impossible, impracticable, inappropriate, or as mere frills or wish-list items for a far more distant future. Together, they constitute one of the great shifts in daily court operations in the last half century. And they were created by the confluence of two factors – an historic legal dispute over the American presidency and technological changes that had begun less than a decade earlier, most especially the advent of the World-Wide Web.

First and foremost, these changes occurred because the Florida Supreme Court was a court that was more than willing to embrace technology and take advantage of all it had to offer, a court that was willing to innovate and not just do things as they had always been done, and a court that deeply believed in transparency. That mind set,

which had already led to the groundbreaking innovation of cameras in courtrooms[1] created an atmosphere that allowed the other innovations to happen; in fact, it drove those innovations.

The five major changes to court operations were: (1) courts creating professional Public Information Offices to oversee communications with the public on a daily basis, (2) courts routinely using websites and the Internet as direct communications tools with the public, (3) courts accepting case filings electronically using web-based connections, (4) courts processing the cases electronically including internal circulation and voting on opinions, and (5) courts broadcasting their own proceedings live, in real time, on a global basis using the Internet as well as more traditional media.

1. Court PIOs. Prior to 2000, court public information officers (PIOs) were relatively rare. The Florida Supreme Court named its first PIO in 1996 under then-Chief Justice Gerald Kogan. Even then, the job position's usefulness was questioned. Elimination of the position was often discussed up until *Bush v. Gore*, on grounds that the cost of the position was not justified by enough media and public demand. At the time in 1996, PIOs existed only at the United States Supreme Court, in the Supreme Courts of the larger and more urban states, and among a few large trial courts that tended to produce frequent high-profile cases, like Los Angeles.

Bush v. Gore changed all of that. It marked the first time that court PIOs became a primary focus of news coverage caused by intense worldwide demand for information about court proceedings. This happened in part because the 24/7 news cycle that, at the time, was evolving from its origins in television news toward a much broader and more pervasive phenomenon. It was moving gradually toward a distribution model in which both written and multimedia news products were delivered via the World-Wide Web. In the fall of 2000, the Florida Supreme Court literally had the choice of either managing this press scrutiny or letting it descend into chaos visible to a worldwide audience. The Court chose to manage it through the PIO, and that effort was widely viewed as a success.

As a result, Florida's approach to public communications in *Bush v. Gore* changed the way courts viewed the proper role of a court PIO. Before 2000, the consensus among courts employing PIOs was that they should be used as seldom-seen facilitators who fielded routine press questions behind the scenes but obscured their own identities. Under this model, if anyone appeared on television or was quoted in

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1. *Pet. of Post-Newsweek Stations, Fla., Inc.*, 370 So. 2d 764 (Fla. 1979).

a newspaper, it was one of the judges at the court, or maybe the Clerk, not the PIO. The PIO simply laid the groundwork and nothing more.

This model had been followed even when it produced disastrous results. The most prominent example was in the 1995 O.J. Simpson trial in Los Angeles. There, the presiding judge personally appeared in a five-part pre-trial television news interview, fanning speculation that he was seeking personal publicity and fame.[2] It was one of several elements that led courts around the nation to view the Simpson trial as a bad example. Some even contended that, yet again, it showed that courts should avoid television and similar publicity rather than risk undermining public trust and confidence.

But there was another way of looking at the Simpson trial failure. *Bush v. Gore* helped highlight a critical distinction in the way Florida approached its judicial duties and the way Los Angeles courts did. Because the presidency of the United States was at stake in *Bush v. Gore*, worldwide press scrutiny was so intense that it was impossible for both practical and ethical reasons for judges themselves to have direct involvement in press relations. And this was especially true considering the pitfalls made vivid by the Simpson case.

Moreover, the intense press scrutiny in *Bush v. Gore* occurred while the Florida Supreme Court Justices and their staffs were confronting some of the most time-sensitive and difficult cases in the Court's 155-year history. Responding to the press became more than a full-time job by itself. It would have been an impossible burden to expect judges and their judicial staff or Clerk's Office to manage press relations themselves without help from a professional PIO.

It is not surprising in retrospect – although some judges thought differently at the time – that having a full-time PIO who was fully attentive to the informational needs of the press and the public paid dividends. Despite controversy over its rulings, the Florida Supreme Court was widely praised for its commitment to openness and transparency in a matter of urgent importance to millions of people around the globe.[3] This was especially true with the public announcements of court decisions on live television from the front steps of the Florida Supreme Court Building. These

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2. Kenneth B. Noble, Simpson Judge Under Fire for TV Interview, N.Y. Times B7 (Nov. 16, 1994).

3. *E.g*., Jeffrey Toobin, *Too Close to Call* 132 (Random House 2001).

live announcements created an appearance of order at the Court and of sincere responsiveness to public demand for timely information about history-changing decisions. Most critically, it allowed the Court, through its PIO, to make clear what the Court's decision was. It was not left to the press to guess.

By contrast, the U.S. Supreme Court adhered more closely to the traditional model in its own handling of press relations. It eschewed public announcements like those made by its Florida counterpart. As a result, the nation's highest Court was widely criticized for its lack of openness and transparency at a critical point in world history.[4]

The comparison was not lost on the U.S. Supreme Court. Although U.S. Supreme Court Chief Justice William Rehnquist openly criticized his Florida counterparts for being too open, claiming this level of transparency was undignified,[5] his Court nonetheless bowed to public opinion and released tape-delayed audio of its own appellate proceedings in *Bush v. Gore* for the first time in its history.[6] This was widely seen as a partial bow to public pressure arising from Florida's successful and historic use of Internet livestreaming for its own oral arguments in the *Bush v. Gore* cases.

The issue of court communications with the public only intensified in the years ahead. After seeing what happened in *Bush v. Gore*, many courts realized they were totally unprepared if a major legal dispute came their way, brought by the kind of worldwide scrutiny the Florida Supreme Court had successfully faced. At that point in time, few people had anticipated the full scope of changes brought by the invention of the Internet. So, judges and court managers around the world scrambled to prepare for the future, taking lessons from Florida's use of technology and transparency.

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4. A point the U.S. Supreme Court did not learn. When the Court issued its opinion in the so-called Obama Care case, many reporters incorrectly reported the result because they were trying to read it as they were live on air. A Court PIO announcing the decision would have changed that.

5. David A. Kaplan, The Accidental President 153 (William Morrow 2001).

6. Tony Mauro, *Glasnost at the Supreme Court*, in A Year at the Supreme Court 198 (Neal Devins & Davison M. Douglas eds., Duke U. Press 2004).

After *Bush v. Gore* was finalized, many courts worldwide began establishing their own Public Information Offices for the first time. The Florida Supreme Court's handling of press relations in the fall of 2000 is still studied in professional development programs for courts and other governmental organizations. It is viewed as a successful use of transparency to address public concerns about the integrity of proceedings in a highly charged and politicized environment.

The lesson of *Bush v. Gore* was that real transparency achieved through technological means *controlled by the courts themselves* was emerging as the new norm in the Twenty-First Century. Other more traditional views of court decorum could create a harmful image of secrecy, mistrust, and disorder. Judges certainly should not be involved in press and public relations. But it still was wise for them to employ professional PIOs who could do so.

The model of a professional PIO, rather than judges, serving as the public face of a court in moments of high controversy has become the predominant one in the Twenty-First Century. Courts now recognize the inherent appearance of a conflict of interest if judges attempt to handle public communications themselves under such intense public scrutiny. The failures of public relations in the Simpson case could have been avoided by courts employing their own PIOs as intermediaries with the public, helping to distance judges from any appearance of ethical impropriety.

The demand for information about the Florida Supreme Court's successful public information program skyrocketed in 2001. It put the Florida Supreme Court's PIO on the professional speaking circuit for the next four years. State judicial conferences, state Bar associations, and governmental communications offices saw the Florida Supreme Court as a model for their own efforts to meet new demands for information created by the emergence of the World-Wide Web. Many courts around the nation and around the world hired their own PIOs for the first time.

Even in Florida, the lessons of *Bush v. Gore*, combined with the impact of the 2001 terrorist attacks, prompted a 2002 recommendation by a Florida Supreme Court commission that every division of the State Courts System have its own PIO.[7] This in turn led to the creation in 2005 of the first state-specific court PIO professional association in the United States, the Florida Court Public Information Officers, Inc.

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7. Fla. Office of the State Courts Administrator, *Keep the Courts Open: Final Report of the Florida Supreme Court Workgroup on Emergency Preparedness* (Mar. 28, 2002).

(FCPIO). Today, FCPIO is one of the key components of a statewide Court Communications Plan that is helping the judiciary successfully meet the challenge of the Coronavirus pandemic.

2. Court Websites. It is hard to remember today that in 2000, court websites still were a new phenomenon. Many courts, including the U.S. Supreme Court, lacked websites at that time. However, the Florida Supreme Court had one of the oldest court websites in the world, dating back six years to its first collection of just 16 webpages. The Court's website was first put online in 1994. All the initial material in those pages was taken from a simple docent manual[8] for courthouse tours aimed mainly at students and tourists visiting the Florida Supreme Court, with no content about official business, filings, or dockets. However, the content on these pages would soon expand dramatically. Staff and court customers began to realize the Internet was an entirely new communications medium with an amazing array of uses not yet fully imagined in 1994. Online information met a need that could be addressed in no other way.

The Florida Supreme Court began posting opinions and filings in high-profile cases on its website two years later in 1996 as one of the first projects of the newly created Public Information Office. This use of a website to distribute free copies of official documents was an unheard-of novelty at the time. Although other courts were exploring the idea, most others planned to charge a fee to access their documents. At first, Florida was unusual in providing documents at no cost and without need of registration. This "public domain" approach to online court documents was a minority view at the time.

This particular use of a court website was so novel that it was featured in 1997 in Detroit at the annual Court Technology Conference, which the National Center for State Courts sponsors every few years. Much of the audience in 1997 remained skeptical of the idea that courts even needed websites. And if they did, most courts still favored plans to develop websites that would pay for themselves and for other court budget items through access fees. They gave little thought to First Amendment concerns and to issues of the public's ability to access official documents.

That view would soon change as the Internet itself altered public expectations about access to government. There were obvious harbingers in the months ahead of this

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8. Robert C. Waters ed., *The Supreme Court of Florida: A Reference Manual* (Fla. Supreme Ct. Historical Soc'y 1995).

trend, especially as the World-Wide Web placed courts under a new and more pervasive form of public scrutiny.

In Florida, the first big example came in 1999 when the Florida Supreme Court confronted a case that received worldwide press attention in a pending legal issue. The case involved Florida's death-penalty law, specifically its continued practice of conducting executions in an electric chair that already had malfunctioned twice. Ironically, it marked the first time a court's website itself generated global headlines; an obvious indicator of how novel court websites were at the time.

In the summer of 1999, a third botched execution occurred in the electric chair. It involved inmate Allen Lee Davis. He was executed on July 8, 1999, a gory event that spawned headlines for weeks. It also provided a first glimpse at the kind of worldwide scrutiny that would come a year later in *Bush v. Gore*, when Florida's problematic presidential election – caused by a badly drafted state election code, faulty election technology, and ballot design – thrust the state into the international media spotlight in a way never imagined before.

The electric chair case came to the Florida Supreme Court, after the Davis execution, as a challenge to the method of execution under various constitutional provisions, including the prohibition against cruel and unusual punishment. After reviewing the case, the Florida Supreme Court affirmed a statute authorizing the electric chair's use despite its proclivity to malfunction.

Justice Leander J. Shaw, Jr., issued a blistering dissent. In doing so, Justice Shaw did something unusual. He attached color photos taken by a Department of Corrections' inspector general that showed the gruesome and bloody scene of the Davis execution inside Florida's death chamber. Nothing like it had ever been included in a Florida Supreme Court opinion before.

Like all other opinions since 1996, this decision along with Justice Shaw's dissent were uploaded to the Florida Supreme Court website. But it was the first-time photographs were formally appended to an opinion placed on the Court's website. Today's world has trouble remembering that, in 1999, digital photographs were still something of a novelty. People still were not widely accustomed to the technology. And the wide spread alteration of photographs by programs like Photoshop still lay in the distant future, meaning that gruesome photographs of an execution gone awry still had a shock value in 1999 that they would lack today.

The inclusion of the photographs was duly noted by the press, but not in a way that brought much attention to their presence on the World-Wide Web.[9] No newspaper reprinted the photos, and they were never shown in any detail on television news broadcasts. Moreover, the press still relied on paper copies, which they retrieved by sending reporters to the Florida Supreme Court building in Tallahassee. The press was still following traditional reporting techniques, as yet unaware how the Internet would change journalism in the years ahead. Most reporters did not even realize that the photographs also were available online on the Court's website.

A week passed before people around the world realized the photos could be viewed on the Internet. This knowledge only became widespread because the *Miami Herald* published a news story belatedly providing the actual web address of the specific webpage where the photographs were located.[10] Once this realization took hold, these photographs created a noticeable worldwide response. They were the only known official photographs of a modern state execution placed on the World-Wide Web up until that point in time. And like all Florida Supreme Court decisions, they were available for instantaneous viewing, free of charge.

What these photographs depicted sparked outrage. It led to protests at American embassies abroad and generated an avalanche of new legal challenges to Florida's electric chair. The rising controversy soon prompted the U.S. Supreme Court to accept review in a case challenging the electric chair,[11] which in turn caused the Florida Legislature to render the issue moot by abolishing use of the chair in favor of lethal injection. Rather than risk losing in the nation's highest Court, the legislature retired the electric chair.

The power of a court website was unmistakable. In the end, Justice Shaw's views prevailed. Web access gave wider berth to his dissenting viewpoint, moved public opinion in Florida and elsewhere, and led to the effective abolition of the electric chair. And it did so very rapidly. Less than four months had passed between the

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9. *See, e.g.*, Steve Bosquet, *Electric Chair Staying on the Job*, Miami Herald 1A (Sept. 25, 1999) (referring to Justice Shaw's inclusion of the photographs as an "unusual step").

10. Lesley Clark, *Execution Photos, Racist Tape On-line*, Miami Herald 1B (Oct. 1, 1999).

11. Bryan v. Moore, 528 U.S. 960 (1999) (granting certiorari).

Davis execution and the U.S. Supreme Court action that led to the legislature ending the electric chair in Florida.[12]

The stage was set for 2000. Just as occurred in 1999, the Florida Supreme Court website would be used to distribute court filings and opinions just a year later in *Bush v. Gore*. The particular webpage for election filings, still located on the Florida Supreme Court website today, was modeled after a similar page created for the extraordinary spate of filings in the 1999 cases challenging Florida's electric chair. The 2000 presidential election website was online and available to the public by the Friday after the election, November 10, 2000, in time for filings coming to the Florida Supreme Court in the cases later known to history as *Bush v. Gore*. Sixteen election cases were decided by the Court during the 36 day *Bush v. Gore* period.

The Election 2000 webpage was not the only page created for accessing filings in the Court. By pure coincidence and as part of the Court's ongoing efforts at transparency, the Clerk's office had launched a webpage toward the end of October for the purpose of posting copies of all briefs filed at the Court in every case. Copies of briefs filed at the Court were the most common documents attorneys from around the state requested. Posting the briefs on the Clerk's portion of the Court's webpage drastically reduced the time spent responding to such requests. Although anyone from the public could access them, the pages were primarily used by attorneys to keep track of what issues might be pending at the Court and whether groups might want to consider filing amicus briefs in individual cases. When the election cases started, it was easy to adapt those pages and post everything filed in the election cases.

But the presence of those webpages alone did not get the attention people would expect today, 20 years later. People still were not accustomed to using the Internet to monitor official events. So, this particular use of the World-Wide Web was still very new and largely unfamiliar to most people. Reporters were no exception. Accustomed to their own longstanding routines, journalists seemed not to understand the value of having court documents online within minutes of filing. They still wanted paper copies retrieved at the source.

The Court's Public Information Office repeatedly emphasized that the filings were available on the website and did so on live worldwide television. Articles were even

12. Robert C. Waters, *Technological Transparency: Appellate Court & Media Relations after* Bush v. Gore, 9 J. Appellate Practice & Proc. 331, 361 (2007).

written about the subject. But reporters were so habituated to obtaining official documents only in paper copies. As a result, several hundred reporters descended on the Florida Supreme Court each time major opinions were released. And each reporter expected to receive paper copies at the front doors of the courthouse. It justified their expensive travel to Florida's capital city, after all.[13]

This same process of reporters standing in line repeated itself for the first few weeks of the election controversy. But one day one national broadcast news organization obtained a copy of a recent filing a few minutes before anyone else and reported it immediately. The other news organizations were not happy. The Court asked the Clerk's office, how did that happen? Not knowing, the Clerk contacted the news organization and simply asked them how did they get that? The reporter was candid. The Court's web pages auto-updated every fifteen minutes. But this particular news operation realized that things might be posted to the pages during those fifteen minutes, creating a slight delay from when it was posted to when it was available. So, the news organization assigned someone to go the Election 2000 web pages and hit refresh on their web browser every few seconds. They guessed right and got a filing before everyone else.

But even that did not change long standing habits of reporters getting paper from the Court. Paper was still the main source reporters wanted, until, one day, the Florida Supreme Court's only high-speed photocopier broke down. Then paper copies were not available in a timely manner at the door. Only then, after much prompting by Court staff, reporters turned to the unfamiliar idea of printing copies directly from the Florida Supreme Court website.[14]

News organizations seemed surprised to realize that they could do so even in their home offices in New York, Paris, Tokyo, or Moscow. Suddenly, having so many reporters' feet on the ground in Tallahassee looked like a needless expense for media and an actual impediment to quick coverage of breaking news. In fact, those on the ground outside in front of the Court started to realize they were actually at a disadvantage. Reporters at their corporate offices could get copies of filings quicker than those on the ground.

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13. To ensure everyone had an equal chance at access to the new decisions, the Court did not release opinions until the Clerk's Office had three hundred paper copies available to hand out to those in line at the front doors of the courthouse.

14. And they still printed the copies instead of reading them on the computer as they would do now.

During the election proceedings, the Court started requiring, in addition to filing paper copies of briefs and other filings, parties to provide the Clerk's office with an electronic copy of the filings. Parties had to provide a floppy disk[15] with an electronic copy of all the filings along with the paper. When new things were filed, the Clerk's office would start date-stamping the paper copies so they could be docketed.[16] But while that was occurring a deputy clerk would take the floppy disk to a computer designated for that purpose and upload the electronic filings on the disk directly to the Clerk's webpages containing the election case filings. The filings were thus available literally within seconds, often before the filings were actually recorded on the docket. The electronic copies were then sent to the Public Information Office for placing on the press office election case pages only moments later.

Today, obtaining documents off a court's website is so routine we think of it as part of the landscape. But the single historical event that marked the transition into this era of web-based self-service was *Bush v. Gore*. Staff at the Florida Supreme Court even noted a drop in the number of reporters gathering outside the courthouse as the election controversy approached its conclusion. Once the election controversy was finished, the Court itself soon stopped issuing any paper copies of opinions, relying entirely on web distribution instead. Today, of course, it is entirely possible for a reporter to cover a major lawsuit or appeal from start to finish without ever stepping inside the courthouse doors.

But in 2000, the very idea of such a thing seemed like magic. In fact, it is easy today to forget that *Bush v. Gore* occurred before the development of social media, which now dominates much of the communications landscape in 2020. The availability of social media has changed many of the assumptions underlying the Florida Supreme Court's approach to crisis communications.

Twitter alone, for example, serves the same need and thus replaces the live television appearances required in 2000 to get information out to the press and the public quickly, fairly, and in an orderly manner. In the area of social media, too, the Florida Supreme Court would become a pioneer in the years ahead when it posted its first Twitter page in 2009. This was followed up in succeeding years with accounts on YouTube, Facebook, LinkedIn, and other social media, along with podcasts. With

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15. Floppy disks were the most widely available advanced technology at the time.

16. At that point the Court was requiring 23 paper copies of everything filed, in addition to the original.

the adoption of the Communications Plan in 2016, the use of social media also spread to Florida's lower courts. Through social media, court PIOs could distribute official news and documents instantaneously on a global basis. Today, we tend to forget that such things did not exist during the *Bush v. Gore* controversy in 2000.

3. Court eFiling. At the time of *Bush v. Gore*, electronic filing still was a far-away dream. The idea had been discussed since the first successful placement of court documents online, which began at the Florida Supreme Court with "high profile" cases starting in the 1990s. But there were many problems, including high cost. Issues that continued to stall development of eFiling for many more years included authentication of filings, enforcement of procedural rules within a digital environment, and problems of public access to official documents that often contained private information made confidential by law. These problems would delay the launch of Florida's eFiling efforts another decade.

But *Bush v. Gore* brought an unexpected foretaste. As the controversy progressed, it quickly became apparent that there were several cases pending in the trial courts that involved presidential election matters. Then-Chief Justice Charles Wells, using a model developed in death penalty cases, asked the Clerk's office to start tracking those lower court cases, including getting copies of the filings in the trial court at the same time they were filed there so that the Court could have an idea of what was going on below and, more importantly, understand what might be coming to the Court. It also created a "pre-record" legal staff at the Court could review in advance of the actual record reaching the Court so the Justices and staff could be prepared to act on cases under the incredible time-restraints that were becoming common place in election cases.

The Supreme Court Clerk's office contacted the trial court clerks across the state and asked that, as pleadings in any election case pending in their court were filed, the local clerk fax copies to the Supreme Court Clerk's office. But it quickly became apparent that would not work. Fax technology, even in 2000, was outdated. It turned out there were 46 cases involving the election pending around the state with filings in all those cases happening by the hour. In addition, the timing of attorney filings became a growing problem in November and December of 2000. Justices of the Florida Supreme Court needed as much advance time as they could get in addressing issues attorneys intended to raise, due to tight deadlines imposed by federal law on presidential election returns. The old system of paper filings became a hindrance, and the fax machine was not helping.

The Clerk's office realized that email was the only way, at that time, to get electronic copies quickly and reliably. Email was in use at that time, but not for court filings. The Clerk's office asked technical staff at the Court to create an email address specifically for receiving such filings. When asked what email address the Clerk wanted, the Clerk decided to use efile@flcourts.org. The Clerk's office asked the trial court clerks to start sending all the trial court filings to that email address rather than use the fax machine. It worked.

Then increasingly, even after the election, the Clerk's Office asked attorneys to send their documents in PDF as soon as possible to that email account set up for that purpose, with courtesy copies to all attorneys and parties involved. This let the Justices begin to review arguments before paper copies could be officially stamped and placed into the Clerk's filing system. PDF documents created by the attorneys themselves also made it much easier to place the documents quickly online for access by the public worldwide. That email address stills exists and is used by the Supreme Court as a backup for filing in emergency situations, such as if Florida's E-Filing Portal stops operating.

This temporary system during *Bush v. Gore* was simple. It made no effort to address the many remaining problems involved in the final move toward a full eFiling system. But it worked in this specific context. In the rarefied environment of a dispute over a presidential election, the many remaining problems associated with eFiling, such as privacy in confidential data, were nonexistent or readily avoidable. Those problems have now been largely resolved and what was foreshadowed in 2000 became reality in 2013 when a cooperative agreement was reached between Florida's clerks of court and the Court and Florida's E-Filing Portal was launched.

Today, the Portal processes more than 1.7 million filings every month, with instant service on everyone in the case and virtually no problems. Numerous other technical innovations continue to be adopted in Florida including, for example, the use of artificial intelligence to automatically docket filings in Palm Beach County.

4. Fully Electronic Case Processing.

In 2000 it was certainly not uncommon for courts to have electronic case management systems (CMS). But, at that point, CMS were largely limited to docketing. Few courts had the documents themselves in an electronic format and fewer, if any, used their CMS to actually process their cases, meaning (at the appellate level at least) assign the case, allow for reading of briefs and law clerk summaries on the computer, circulate draft opinions, and even vote electronically.

In other words, court files and paper still moved around the Court. But with a fully electronic system, everything related to processing of a case from the filing of the notice of appeal to release of an opinion could take place electronically.

In 2000, the Florida Supreme Court was in the midst of rolling out such a complete electronic CMS called Evote that the Court would use internally. Evote was designed to eliminate paper from the internal court system. An opinion could be drafted and circulated to the other justices for comment, suggestions, and even voting – all on the computer. There was no need for paper at all. Once voting was complete, the opinion was processed by the clerk's office, reviewed by the Reporter of Decisions, and then released to the public electronically.

It seems almost silly now to say that is how to process a case because today that is how almost every court operates, but not in 2000. Even at the Florida Supreme Court where the Evote system was in place in 2000, the Court. for the most part. still circulated paper court files from the Clerk's office to the Justices' offices and back. For the most part, Justices indicated their vote on a paper form that was then sent to their judicial assistant and their judicial assistant entered the vote into the Evote system. The paper vote sheet was retained in case there was a mistake in the Evote system. An idea—i.e., that the vote might be entered incorrectly—that proved to be entirely wrong. For three years from initiation of the system, the paper vote sheet was retained by the Clerk's office, just in case. During those three years, not a single electronic vote was incorrect, and the court stopped paper voting.

But having the system in place proved invaluable, especially the ability for Justices to vote electronically. During *Bush v. Gore*, the Court issued an opinion the day before Thanksgiving. The Justices then scattered across the country to spend the holiday with their families. But on Thanksgiving morning, while the Clerk and the Chief Justice were watching the news on TV, along with the rest of the country, one of the attorneys representing the litigants was seen knocking on the front doors of the Court. A security guard let him inside.

A quick call to security from the Clerk confirmed what appeared to be happening was happening: a new case was being filed. That call was quickly followed by a call from the Chief Justice to the Clerk asking what was happening. A plan was developed for how the case would be handled and how the pleadings would get to the Justices across the country. Mail was out of the question because it would take too long. Immediate action was required. The entire case was processed, including justices considering the pleadings, voting, approving the order prepared by the

Clerk's office, and issuance of an order disposing of the case – all electronically. The Justices enjoyed the holiday with their families, albeit with an interruption.

Just as the PIO spent the next few years traveling around the country teaching how the Court handled the onslaught of the press during *Bush v. Gore*, the Clerk spent the next few years traveling around the country teaching courts how to handle a high profile, extremely time-sensitive case. Even today, both are often asked to speak to professional associations, legal groups, and journalists about the issues they faced handling *Bush v. Gore.*

In total, the Court processed and disposed of 16 election-related cases during those 36 days. It might not have been possible, certainly not possible for it to have gone so smoothly, had the Court not had all the technology already in place. Learn and adapt became a motto, certainly in the Clerk's office, but for the entire Court as well. Twice-a-day meetings between the Chief Justice, the Clerk, the PIO, and the Marshal allowed the Court to continue to adapt as necessary, to handle not only the *Bush v. Gore* cases but all the Court's other workload as well.

5. Court Broadcasts. The one area in which the Florida Supreme Court especially stood out in 2000 was its ability to make a broadcast-quality feed of all its arguments in *Bush v. Gore* available on a global basis. In this sense, the happenstance of the election dispute occurring in Florida was fortuitous. By 2000, the Florida Supreme Court already had three years' experience broadcasting gavel-to-gavel coverage of its oral arguments by three methods: (a) a feed distributed on Florida's state-operated cable news network, The Florida Channel; (b) a direct link to a state-owned satellite transponder available for downlink anywhere in North America; and (c) a web-based livestream from a video web portal called Florida Gavel to Gavel.[17] Redundancy was built into the system to ensure broadcasts could be delivered under almost any circumstances, including during a crisis.

This cutting-edge system of broadcasting oral arguments had been put in place in 1997. This came about through a cooperative agreement between the Florida Supreme Court and Florida State University (FSU), led by then-Chief Justice Gerald Kogan and then-President of FSU Talbot "Sandy" D'Alemberte. Managed by the Court's Public Information Office, it was a program many years ahead of its time and far more advanced than anything that existed in other courts and most other

17. Florida Gavel to Gavel, https://wfsu.org/gavel2gavel/.

governmental bodies. Mr. D'Alemberte, in fact, won an Emmy for his role in the project and televising court proceedings in general.

Livestreaming of *any* video and audio feed at the time was considered exotic technology, but even more so for court arguments. The practice even produced some controversy. Most people still had Internet connections that lacked enough bandwidth to make livestreaming workable on their own personal or office computers. Livestreaming, in other words, still had an elitist quality because it was not yet widely available to people of more modest means – although that situation would change in just a few years.

In 2000, the bandwidth issue clearly diminished public understanding of the true significance of the Florida Supreme Court's livestream. Many viewers were unaware it existed. Most continued to rely on television networks and cable systems to deliver government access broadcasts to their homes and offices. The corporate network television "filter" still existed. It would be several more years before consumers of news would come to expect government organizations to make livestreams of their proceedings directly available on the Internet without need of relying on a corporate network.

Even with this limitation, the Florida Supreme Court's redundant approach to its broadcasts still worked in a way that surprised even the big corporate television news networks in New York. Florida's satellite feed was more than adequate to fill their needs along with the needs of any foreign television networks with the ability to downlink a satellite transponder feed in any North American city. And that included every major and minor international network because all of them had access to downlink facilities in places like New York, Atlanta, and Miami.

When many news networks representatives first arrived in Tallahassee at the start of the presidential election dispute in November 2000, their first act was to file legal demand letters with the Florida Supreme Court for placement of their own cameras inside the courtrooms. This would have been a cumbersome arrangement fraught with security problems. It would have meant cables running down court stairwells and out doorways to the large fleet of satellite trucks that soon arrived in Tallahassee and surrounded the capitol complex.

These networks were stunned to learn that the Court already had four robotic broadcast-quality cameras installed in the courtroom that could feed video and audio wirelessly to their corporate home offices in other cities by satellite. No other court had anything like it. Some of these representatives were so shocked they refused to

believe such a system could work. They insisted upon meetings with FSU technicians and test runs to assuage their worries. But at broadcast time, the satellite relay directly from the Florida Supreme Court worked without any problems.[18]

Two separate oral arguments were heard in the *Bush v. Gore* cases in the fall of 2000, on November 20 and December 7. Both were broadcast to a worldwide audience live, unedited, and from start to finish. No changes of any kind were needed to make these broadcasts possible because everything needed already was in place. It was the Court's system that was used, not the systems of the broadcast networks.

To this day, these two Florida Supreme Court oral arguments remain the only appellate proceedings in history that were broadcast to a global audience in their entirety. Some estimates placed the live audience in the United States alone at 50 million, not counting viewership in other nations. Nothing similar happened at the U.S. Supreme Court, which adhered to its policy – still in effect today – of not permitting television cameras into its courtroom.

One commentator called the international broadcasts "unprecedented" and added:

> Rather than hear the usual day-after-day political spinning from both camps, the public would see extended colloquies between judges and lawyers, in a surrounding where respectful and temperate arguments replaced the more familiar cacophony of overheated accusations.[19]

Another noted that "it was impossible not to be impressed by [the] dialogue in the court."[20] By any estimate, the technological transparency of live broadcasts combined with ready access to court filings on the Internet created a positive and

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18. While the Court's cooperation with the networks was extensive, it was not total. When the networks asked the Court to delay the start of oral argument by fifteen minutes to allow the networks to "set the scene," the Chief's Justice's answer was swift and sure – No! The Court retained complete control of its own proceedings.

19. Howard Gillman, *The Votes That Counted* 63 (U. Chi. Press 2001) (quoting Editorial, Rational Justices, Bos. Globe-online edition A14 (Nov. 21, 2000); Editorial, *Justices Behave Better Than Candidates' Camps*, Phila. Inquirer online edition (Nov. 21, 2000)).

20. David A. Kaplan, The Accidental President 140 (William Morrow 2001).

lasting impression. It showed that the Florida Supreme Court was not engaging in a political act, but a studiously fair judicial process.

6. Conclusions. This impression of a fair and open process helped counter an opposing narrative put forward by some of the political operatives involved in *Bush v. Gore*. They clearly hoped to create a public-relations impression that the Florida Supreme Court was a rogue tribunal aiming to resolve the presidential election according to its own preferences. The apparent objective of this public-relations effort was to lay part of the groundwork for a claim in the U.S. Supreme Court that it must step in and reverse its Florida counterpart in order to set things "straight."

But what many people saw on their television sets helped undermine these accusations. In the oral argument broadcasts, people saw judges trying their best to apply principles of voting fairness to an incredibly chaotic series of problems created by bad statutory draftsmanship, inadequate voting devices, and poor ballot design. The Court was burdened with trying to apply a law intended to govern the election of local officials in the context of a presidential election. The most difficult cases frequently involve the messiest facts. All of the 2000 presidential election cases were difficult and messy.

In that sense, much of the *Bush v. Gore* controversy in the fall of 2000 was a public relations clash occurring simultaneously with a series of lawsuits to determine the outcome of a botched presidential election in Florida. There was obvious interplay between the public relations battle and the lawsuits. The core point of disagreement in this public relations war was how to remedy the legal elections mess Florida had created through its badly drafted election code and its use of astoundingly deficient voting technology and ballot design – errors that had occurred months or years before election day without being detected.

On one side, there was the view that the way to remedy the problem was by hand-counting ballots to discern voter intent after the voting technology had failed. This was a view that most clearly corresponded with a longstanding series of Florida election cases going back more than a century making the "intent of the voter" the preeminent legal concern for a Florida court. In that sense, it was not surprising that the Florida Supreme Court adhered to its own precedent. At the very least, transparency in oral arguments and court filings helped show the public that this was so, as the Court's Justices repeatedly called attention to Florida precedent that predated *Bush v. Gore* by many decades.

On the other side, there was the view that Florida should only get one bite at the apple. Election day was November 7, 2000, and any serious errors that occurred on that day were regrettable but not subject to further remedy, under this view. It was an argument for finality. And it elevated finality to a position more important than voter intent. Florida had chosen faulty election procedures, in other words, and its voters would pay the price. There was precedent supporting this view, too, along with the constitutional equal protection arguments the U.S. Supreme Court ultimately marshalled when it adhered forcefully to the principle of finality and reversed the Florida Supreme Court.

To a significant extent, both Republicans and Democrats in this public relations war were engaging in spin and exaggeration with the hope of influencing outcomes. The law occasionally confronts cases where both the law and the facts are so ambiguous that strong cases can be made for either side's arguments. *Bush v. Gore* was quintessentially one of these cases. And from a point in time 20 years later, it is obvious that the public relations battle was marked by partisan hyperbole. Unfortunately, it was in the interests of the prevailing side to discredit the Florida Supreme Court in hopes that a public backlash would help sway the United States Supreme Court.

This strident approach to public relations has become more prevalent in the years that have followed. To that extent, the partisan hyperbole surrounding *Bush v. Gore* was a precursor of what today is called "disinformation." Of course, social media did not exist in 2000, and much of today's disinformation is spread on the variety of social media platforms that have become prevalent in the last 20 years. But the first stirring of disinformation as a public relations tactic were evident in the fall of 2000, even if in a somewhat more restrained manner than today.

There are clear lessons here for courts in the future. Transparency helped the Florida Supreme Court establish its own good faith for the history books. And transparency was achieved through the technology the Court employed. Without this technology, the public relations campaign launched to attack the Florida Supreme Court's rulings might have gone unanswered. It is no coincidence that these same technological innovations now have become standard operating procedures for courts throughout the nation. This use of technology is good for public understanding and thus tends to promote public trust and confidence in the courts.

And the extensive use of technology in 2000 and its continued use by Florida courts makes those courts far more efficient. It is difficult to believe that Florida's courts could continue to operate as they have done and continue to do if the Florida

Supreme Court had not so fully embraced technology. Florida's E-Filing Portal is the most robust state court system in the nation. It has led to almost every court in Florida putting their documents online for easy access by the public. Florida now has a Florida Courts Technology Commission that deals every day with the implementation of new technology in Florida's court system. There are many new innovations on the horizon. For example, a test project is in the initial stages of development that would allow prisoners to have electronic access to their court records and even file their pleadings electronically.

But the other important lesson here is that courts cannot let disinformation about their own operations go unanswered. Due to ethical restrictions, it is often not possible for judges or courts to directly refute attacks on their rulings. But courts can at least show the public the evidence of their own good faith in approaching judicial duties. Sometimes a picture is worth a thousand words. And there is little doubt 20 years later that the Florida Supreme Court's transparent approach to *Bush v. Gore* served it well and established a more accurate historical record.

The bottom line of *Bush v. Gore* though is that Florida was prepared because the mind set in Florida was to embrace technology and use it. Florida was not afraid to innovate including the use of a full time PIO, broadcast quality cameras in the courtroom and technology in place that allowed receipt of electronic documents and then the ability to process those electronic documents efficiently and effectively. Courts around the world now do the same, in large part because of what they saw at the Florida Supreme Court during *Bush v. Gore*.