

The Federal Courthouse in Boston



Comments on Professor Burkhard Hess' Paper: Judicial Communication in the Digital Age:
New Developments in the CJEU and European Supreme Courts

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Professor Hess's paper is like a doctor's prescription for what ails the U.S. Supreme Court in its halting efforts to join the digital age, as I hope I illustrated in my own presentation yesterday. His paper, and, indeed, his entertaining lecture at the Hague Academy of International Law, which is preserved online,¹ contains a wealth of examples of how some courts in Europe have made great advances both in the "access function" and in the "communication function" of their websites, while others may even lag behind our Supreme Court.

In terms of the access function, the leader seems to be the European Unified Patent Court's website, which offers what amounts to a portal for parties to directly file submissions into its case management system. As to the communications function, the new website of Court of Justice of the European Union, also in Luxembourg, offers a dazzling array of live and archived audio and video broadcasts as well as live streaming of hearings and judgments and even explanatory videos of important judgments. This is something that U.S. Supreme Court watchers can only dream about.

On the other hand, our Court's website seems like a modern videogame platform compared to the German Federal Court of Justice, as Prof. Hess describes it. He calls its internet presence "old-fashioned and confusing." It hasn't been updated in many years and only provides judgments online for those after 2000—earlier ones are behind a paywall. And it only contains photos and bios of the Court's President—not of its other 150 or so judges. So it has a lot of catch-up work to do. The Court does have a palatial headquarters building, however.

I also learned that the French Court of Cassation has an excellent introductory video featuring the President of the Court. This is something that our Supreme Court could easily emulate. It does produce excellent videos about the Court, featuring all of the Justices sitting at the time, but these videos (or, to be exact, the latest one) are only shown in the small screening room in the Court's basement museum—which is open to the public. But it would be a simple matter to add them to the Court's website.

Professor Hess then discusses how the principle of transparency is enshrined into EU law by Articles 10 and 11 of the TEU and Article 15 of the TFEU. There is no equivalent law in the United States. Our Judicial Branch is exempt from the Freedom of Information Act and the Government in the Sunshine Act. The one transparency law that does apply is the Courthouse Ethics and Transparency Act of 2022, which requires federal judges to file periodic transaction reports within 45 days for securities transactions over \$1000, which are then made available in a public, searchable online database.

¹ Available at <https://www.cplj.org/news#judicial-communication---a-global-visit-of-the-webpages-of-national-and-international-courts>.

Finally, I especially welcomed Professor Hess's appreciation of the importance of the courthouse buildings and the importance of making them accessible to the public, integrating them into the community, and not presenting an intimidating fortress-like façade to the public.

Perhaps he is familiar with our now retired Supreme Court Justice Stephen Breyer who shares this deep interest in courthouse architecture. Before he joined the Supreme Court, he was the Chief Judge of the Court of Appeals for the First Circuit. In that role, he spearheaded the construction of the award-winning John Joseph Moakley United States Courthouse in Boston, working closely with the architects to design a welcoming building. He also wrote the foreword to a book entitled "Celebrating the Courthouse: A Guide for Architects, Their Clients, and the Public."

When the Moakley Courthouse was opened, he said, "This most beautiful site in Boston does not belong to the lawyers. It does not belong to the federal government. It does not belong to the litigants. It belongs to the people."

[Please show accompanying slide on screen.]