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king of the CLE



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The Minimalist

No one knows how to get to the essence of an appeal like Greg Coleman

by PAUL SWEENEY

photography by CRAIG WASHBURN

Until he argued—and won—two high-profile civil rights cases before the U.S. Supreme Court last year, 46-year-old Gregory S. Coleman, who heads the appellate litigation practice at Yetter Coleman, a 32-lawyer boutique with offices in Austin and Houston, might have been the best lawyer in Texas nobody heard of.

Never mind that Coleman had been managing editor of the *Texas Law Review* at the University of Texas School of Law, clerked for Supreme Court Justice Clarence Thomas, and had already argued six cases before the country's highest court. Never mind that he was the first Solicitor General of Texas from 1999 to 2001, and the first person to hold the position created by the state's Attorney General John Cornyn, and that he built a 12-person office from scratch, instituted programs to upgrade and standardize the quality of the legal team, and represented the state in such matters as the multistate tobacco litigation and the *Hopwood* affirmative action case against UT Law School.

And please ignore that, during nearly two decades of legal practice, Coleman either won reversal or preserved judgments for major corporate clients in commercial litigation that sometimes amounted to hundreds of millions of dollars. Or that he regularly shows up on top lawyer lists, including *Super Lawyers*, for which he's been a perennial member. And in 2007, *The American Lawyer* named him to its "Fab Fifty" list of top young U.S. litigators.

It wasn't until 2009, when the U.S. Supreme Court handed down two civil rights decisions in his clients' favor, that a wider audience became aware of him. "Coleman is a highly accomplished, successful, and very prominent appellate advocate," says Michael Sturley, a law professor at the University of Texas who conducts a Supreme Court clinic and had Coleman as a property law student two decades ago. "If you look at the two cases that had the biggest potential impact [on society] last term, Greg argued both of them."

In *Northwest Austin Municipal Utility District No. 1 v. Holder*, the U.S. Supreme Court not only modified the Voting Rights Act of 1965, but, say legal experts, nearly toppled it. At issue was whether a tiny utility district in Texas, which was formed in the 1980s and had complied fully with anti-discrimination laws during the previous 10 years, could win exemption from the Act's "preclear-

ance" requirements, which applies to all or parts of 16 states and requires those states to get federal approval before changing election rules or rules procedures, due to past laws and practices that discriminated against and disenfranchised racial minorities.

Because the district was part of Travis County, a broader jurisdiction, it was ruled ineligible for bailout at the district court level.

"If you don't allow them the right of bailout," Coleman says, leaning back in a chair in his preternaturally spare, paperless office, "it looks as if you're stuck in the 1960s. There are societal benefits [to be gained from a bailout]. You can see whether governments acted in good faith and if we're making progress as a society. Otherwise, as I wrote in my brief," he adds, "you're at the Hotel California. You can never get out."

By the time the case was heard at the Supreme Court on April 29, 2009, it was featured in columns in *The New York Times* and *The Washington Post*. More than 25 amicus briefs were filed, including briefs on behalf of states, members of Congress and state legislators, the Navajo Nation, and national organizations like the Brennan Center for Justice at New York University School of Law and the American Bar Association. Justice Ruth Bader Ginsberg called the case "perhaps the most important of the term."

In the end, the court determined that political subdivisions at any level could be eligible for bailout from federal supervision if they had a decade's worth of clean voting. But it sidestepped the broader ruling on whether the Voting Rights Act was constitutional. Coleman, who handled the case for a minimal fee, pronounced himself satisfied with the narrower ruling. "Cases sometimes get to be about a philosophical debate," he says, "but in practice it's about winning for the client. Sometimes there's a broad way to win and sometimes a narrow way."

That was largely his motivation as well in arguing *Ricci v. DeStefano*. There, the city of New Haven tossed out the results of firefighters' promotional exams when few blacks and Hispanics passed the tests. In response, 18 New Haven firefighters (17 whites and one Hispanic) who passed the tests for lieutenant and captain filed suit, charging that they had essentially suffered "reverse discrimination." But the district court found in the city's favor and a federal appellate court agreed.

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In its 5-4 rejection, the Supreme Court rebuked the city for its “express, race-based decisionmaking” and reinstated the test results. “During oral arguments,” Coleman says, “you had the city arguing that it was reasonable to deprive firefighters of a promotion if they don’t like the end results of a policy and they’re afraid they’ll be sued. Justice [David] Souter asked me whether the city wasn’t in a ‘damned-if-you-do’ and ‘damned-if-you-don’t’ position. I said these firefighters were told they would get a promotion if they did well. They studied hard to pass the exams and then the city pulled the rug out from under them.”

But what really turned a seemingly obscure dust-up in Connecticut into a *cause célèbre* was that, in overturning the 2nd U.S. Circuit Court of Appeals, the high court reversed Judge Sonia Sotomayor.

Coleman remains pleased that the firefighters got their promotions. “We should just be trying to treat everyone fairly,” he says. “The law distinguishes between disparate impact and disparate treatment. Even if no one intended it, there may be racial imbalance. But I think this makes the law fairer.”

Largely because of his trademark laborious preparation, none of the justices’ rapid-fire questions during the 30 minutes of oral arguments took him by surprise in either case. His advance work involved lengthy moot court sessions put on by Ernest Young, constitutional law scholar at Duke University School of Law and a fellow Texan, which featured several law professors acting as proxies for the Supreme Court justices.

“The idea is that you’ve spent a lot of time anticipating questions and making sure that you have good answers,” Coleman says. “The best answers all feed into the themes of your arguments.”

When a justice expresses doubts, it’s best when you’re able to turn that around and explain why the underlying meaning of his questions actually supports your argument. So you make a challenge into a strength.”

Supreme Court Justice Thomas, known as a man of few words during court proceedings, turns voluble when discussing his former law clerk. “The thing you should always know about Greg is that he’s a perfectionist,” Thomas says in a telephone interview. “He’s highly organized, he’s a prodigious worker and he’s enormously talented.”

SOFT-SPOKEN AND SELF-EFFACING, Coleman is the antithesis of a flashy, flamboyant trial lawyer.

Richard Hogan, a Houston appellate attorney at Hogan & Hogan who has worked both alongside and opposite Coleman, says, “Trial lawyers do many things. But an appellate lawyer’s specialization is figuring out the architecture of the case. Greg’s greatest strength,” he



adds, “is that he knows how to be a minimalist. He doesn’t swing for the fences when a bunt single is good enough to win.”

That is frequently evident in the high-dollar victories he’s won for corporate clients. There was the reversal of a \$137 million judgment against General Electric Capital Corp. in October 2008. In that case, Canatxx Energy Ventures, a Texas-based project developer, had a contract with General Electric Power Systems to examine the feasibility of building power plants in the U.K. When they decided they would not pursue the project further, Canatxx and GE Power went their separate ways, even signing a release agreement. Yet the developer won a jury award against GE’s finance arm from a federal court in Houston, which found that GE Capital had engaged in conduct that was “malicious, willful, fraudulent, or recklessly indifferent.” On appeal, however, Coleman persuaded the court that a release agreement that Canatxx had signed with GE Power also covered GE Credit as well.

“Even for big companies,” Coleman says, “nine figures can be real money.”

Plus, there was the maritime lawsuit he won on appeal after a container ship “hogged” at sea in 1997. In this case, the MSC Carla split in two while straddling a gigantic wave during a fierce storm. All the crew members were rescued the next day. But Rationis Enterprises, which had lost cargo in the accident, sued a Korean shipyard that had lengthened the vessel back in 1984, charging it with faulty welding.

After an unfavorable liability ruling in the Southern District of New York, and facing approximately \$150 million in claimed losses,

“The guy is just off-the-charts in character. Character is the glue,” says Justice Clarence Thomas. “He may have a Porsche mind, but he’ll get out in the field with a tractor.”

Hyundai Mipo Dockyard hired Coleman to handle its appeal. He was successful in convincing the court that Korean law, not U.S. statutes, should apply. And under Korean law, it turned out, there was a “time-bar”—similar to a statute of limitations—of 10 years. The result? In 2005, the appellate court reversed the lower court’s liability ruling, freeing the dockyard from the previous multimillion-dollar claims.

And there was his work on behalf of ExxonMobil Corp. to preserve a \$417 million judgment from a Delaware state court. Essentially, subsidiaries of Exxon and Mobil (later to form ExxonMobil) filed suit when they discovered that Saudi Basic Industries Corp., the largely state-owned petrochemicals company, had been grossly overcharging its U.S. partners in a joint venture since 1980. Proceeding along dual tracks in the state court in Delaware as well as in a federal court in New Jersey, the lawsuit was impossibly complex. It finally landed in the Delaware Supreme Court where Coleman’s arguments prevailed and the outsized judgment was preserved. “It felt great to win,” he says, adding, “Not many judgments of that size are upheld on appeal. It vindicated the client’s interest in ensuring fair treatment under the parties’ contracts.”

Coleman says he is always realistic with clients about their chances for success, never over-promising results. At the same time, the firm does not solely employ the standard practice of billing clients by the hour. The fee schedule, he says, is predicated on whether the firm’s appellate team actually achieves success for a client. That shows that “we have some skin in the game,” he says.

Married for more than two decades and a devout Mormon, Coleman spends his leisure time with family, watching his three sons play sports, taking trips to national parks and visiting monuments.

Gary Truman, a former college roommate and law school classmate who remains among Coleman’s closest friends, says, “There’s something inside him that makes him do his best. He’s a very competitive person.”

Justice Thomas adds: “The guy is just off-the-charts in character. Character is the glue. Sure, he’s smart, but all [my clerks] are smart. Jack the Ripper may have been smart. A lot of cat burglars are smart. But here is someone who shows up every day and does his tasks, even if they aren’t earth-shattering. He may have a Porsche mind, but he’ll get out in the field with a tractor. He’s that kind of guy.”

Thomas notes, moreover, that most young lawyers coming off a Supreme Court clerkship might have angled for big bucks at a high-

powered law firm. “He was a hot commodity at that point,” Thomas says. “Yet he made a commitment to go back to Texas. In returning home, he had to turn his back on opportunities in Washington. But he went back to his roots and he didn’t get caught up in Potomac Fever.”

BORN IN SAN FRANCISCO, Coleman grew up an Army brat. His small family—his parents, himself and a younger sister—picked up stakes and resettled every few years, living in a succession of military venues: Frankfurt, Germany and Okinawa, Japan; Phoenix and El Paso. For spending money, he did odd jobs. One time as a teenager in El Paso (the city that he most regards as home), he went door-to-door, offering to weed neighbors’ lawns for \$5.

One neighbor leaped at the proposition, steering the youth into his backyard. “It was nothing but tumbleweed,” Coleman remembers. “There was no grass. It took me almost all day to get the weeds out and he only gave me \$5.”

He told his father about the bum deal. “I thought I’d get some sympathy,” Coleman says. But his father—by then a Vietnam veteran who would later retire as a lieutenant colonel—did not commiserate. “His reaction was that a deal was a deal,” Coleman recalls, “and that I’d done the right thing by sticking to the agreement.”

He finished up his last two years of high school in Ayer, Mass., near Fort Devens, where he got on the track team as a pole vaulter. He went to the state finals, won, and was Massachusetts state schoolboy champion. Today, he and longtime friend Truman, who practices employment law in Denver, go hiking with their sons in the West, covering 15 to 20 miles a day. Coleman usually sets the pace. “You can just go to a national park and park your car and get into a hike,” Truman says. “To a lot of people it doesn’t really matter. But Greg will get out maps and brochures and do research. He wants to know where you’re going and what you’re going to see. He’s very goal-oriented.”

Those traits were among the reasons that he was invited by the U.S. State Department to travel to Iraq in May and confer with that country’s chief justice, deans of the top two Iraqi law schools and several provincial general counsels. “These are men of great talent and tremendous commitment,” he says. “They are really trying to ensure that the judiciary is independent of the political branches and able to interpret the laws in a way that’s not beholden to the government in power.”

Meanwhile, this fall, Coleman will be back before the Supreme Court. He has been hired to take over a DNA-testing case involving Texas death row inmate Henry Skinner, who was convicted of the triple murder of his girlfriend and her two grown sons on New Year’s Eve, 1993. Coleman will represent Lynn Switzer, the district attorney of Gray County, Texas. At issue is whether a man convicted of killing his girlfriend and her two sons can use a federal civil rights statute to obtain DNA evidence after his attempts to obtain the evidence through various state and federal procedural mechanisms has been unsuccessful.

As for the Supreme Court duty, he says, “I’m always glad to be back. It’s a place where you have to be at the top of your game.”

And a bunt single might be all you need to win. ◀

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