

IN MEMORY OF GREG COLEMAN:
ON CIVILITY

PATRICK O'DANIEL*

“Everything we stand for should be in favor of civility; everything—your livelihood, your country, your institutions.”

—Justice Clarence Thomas¹

Greg Coleman embodied civility. He was a kind and humble man; one who represented to many the epitome of the true gentleman. Although his deeds might loom large, he himself would always seek to diminish his role in accomplishing them. In particular, Greg will probably be best remembered for *Ricci v. DeStefano*² and *Northwest Austin Municipal Utility District No. One v. Holder*³, two important cases he argued in the same week before the United States Supreme Court. *Ricci* was a Title VII case concerning statistical racial disparities with respect to a test taken by New Haven firefighters for purposes of promotion⁴ while *Northwest Austin* concerned the ability of covered political subdivisions to opt out of the preclearance requirements of Section 5 of the Voting Rights Act.⁵ And it is with respect to the latter of those cases where Greg's conduct provides a lesson on the importance of civility. Specifically, in oral argument at the district court level for

* Mr. O'Daniel is a partner with the law firm of Fulbright & Jaworski in Austin. He graduated from The University of Texas School of Law (Grand Chancellor, Order of the Coif) in 1992, where he was an Articles Editor for the TEXAS LAW REVIEW. He served as a clerk for U.S. Supreme Court Justice Clarence Thomas and U.S. Court of Appeals for the Fifth Circuit Judge William Garwood. He co-teaches a course in partnership taxation at the University of Texas.

1. Clarence Thomas, *Civility*, 4 RACE & ETHNIC ANC. L.J. 1, 4 (1998).

2. *Ricci v. DeStefano*, 129 S. Ct. 2658 (2009).

3. *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504 (2009).

4. *Supra* note 2.

5. *Supra* note 3.

Northwest Austin, Greg was confronted with a potentially difficult situation as he made his argument before the three-judge panel.

In the oral argument before the district court, Greg was trying to explain why recent history no longer justified the requirement for a covered political jurisdiction to seek preclearance from the Department of Justice for every change in its voting procedures pursuant to Section 5 of the Voting Rights Act. In effect, keeping preclearance meant that certain political subdivisions were still being treated as bad actors and that there was no end date for removing this taint. Greg explained that when such a requirement was passed it was amply justified by the bad faith of certain election officials who would creatively develop novel methods for denying racial groups the vote in spite of new federal laws prohibiting known, past discriminatory practices.⁶ Obviously, Congress could not specifically outlaw every dirty trick that such officials might dream up and so, as Greg put it, to stop such “gamesmanship,” Congress required preclearance for certain covered jurisdictions for every proposed change in voting procedures.⁷ When it was originally enacted, as Greg explained, this remedy was clearly “important, necessary, congruent and proportional” to the problem of discrimination being addressed.⁸ However, in the last several decades, there was no credible evidence that such intentional gamesmanship continued to occur.⁹

At this point, one of the judges provided the following commentary: “It’s not gamesmanship. It’s discrimination. The Supreme Court’s never used that term ‘gamesmanship.’ It’s discrimination. It’s new forms of discrimination on top of 40 years of discrimination. It’s the same old discrimination It hurts; it’s painful.”¹⁰ This was a highly-charged statement and understandable given the long and wretched history of discrimination in this country. Greg, however, did not retreat from his argument nor change the tenor of his

6. See Transcript of Oral Argument at 19, 29–30, *Nw. Austin Mun. Util. Dist. No. One v. Mukasey*, 573 F. Supp. 2d 221 (D.D.C. 2008) (No. 06-1384).

7. See *id.* at 20–21, 33–34.

8. *Id.* at 19.

9. *Id.* at 31.

10. *Id.* at 19.

remarks. He merely reemphasized his point that, “[t]he evidence does not support that type of iterative, what I will call gamesmanship, or iterative strategies, where you simply move from one discriminatory practice to another to avoid enforcement of the law.”¹¹

Now, try to put yourself in Greg’s shoes and imagine what your response might have been in that circumstance. I suspect that it would have been difficult for many of us to have answered with the same grace and goodwill that Greg demonstrated.¹² Others might have become overheated by emotion and rhetoric. But not Greg. He was genuinely curious about other people and their view points—that is he respected them *as* people. And, indeed, that is the core message of both *Ricci* and *Northwest Austin*: People are individuals—not numbers. Everyone was a unique person to Greg equally worthy of attention and, yes, civility.

I first knew Greg at law school when we both served on the editorial board of the Texas Law Review, he as Managing Editor (though, truth be told, he shouldered much more of the duties of the review than indicated by that title) and I as an Articles Editor. He was a new father and his duties to his family came first before his duties to the review—but that just meant he went home to see his family in the early evening and then came slouching back towards the review offices to put in some more time line-editing the esoteric and recondite thoughts of the latest theory-driven scholar.¹³ He never complained about the extra work he took

11. *Id.* at 31.

12. In this respect, Greg’s behavior is similar to that of Judge Rubin’s as described in Chief Judge Edith Jones’s memorial to Judge Rubin. See Edith Hollan Jones, *In Memoriam: A Farewell to Judge Alvin B. Rubin*, 70 TEX. L. REV. 1 (1991). There, in discussing Judge Rubin’s civility, Chief Judge Jones noted: “Another aspect of his civility appeared in his ability to disagree without being disagreeable, especially in highly charged cases. Neither acerbity nor ad hominem attacks on colleagues will be found in his opinions on such subjects.” *Id.* at 5.

13. See, e.g., Linda R. Hirshman, *The Book of “A”*, 70 TEX. L. REV. 971 (1992) (addressing the overlooked legal issue of whether Aristotle was a feminist); its responses, Richard A. Posner, *Ms. Aristotle*, 70 TEX. L. REV. 1013, 1017 (1992) (blithely denying that Aristotle was a feminist because one cannot “throw away huge chunks of [his] belief system[] without undermining the remainder”), and Martha C. Nussbaum, *Aristotle, Feminism, and Needs for Functioning*, 70 TEX. L. REV. 1019 (1992) (embracing the notion that Aristotle does have something to offer feminism “despite the evident misogyny and inaccuracy of his hierarchical biology”) and reply, Linda R. Hirshman, *Big Breasts and Bengali Beggars: A Reply to Richard Posner and Martha Nussbaum*, 70 TEX. L. REV. 1029, 1032 (1992) (discussing how bigger breasts “serve to collapse the matters of science into issues

on during that year—he just saw it through to completion in the same thoughtful and meticulous manner that people came to admire when, many years later, he just as methodically prepared for oral argument before the United States Supreme Court.

Later, we both clerked for judges on the Fifth Circuit, he for Judge Edith Jones, now Chief Judge of the Fifth Circuit, and I for Judge Will Garwood. Subsequently, we both had the privilege and honor of clerking for Justice Clarence Thomas on the United States Supreme Court. I have Greg to thank for that experience although, again, in his self-effacing way, he would claim that he had no material role to play in such matters. Greg knew that great things could be achieved if one did not worry about credit or publicity but merely worked as hard as one could for what one believed was right. He had those old-fashioned beliefs that justice could be done and the good would win out. He and Justice Thomas shared the faith that each day is a new one and no matter how many cases one might lose there is always hope. Of course, for Greg, he seemed to be more on the winning side, particularly in what turned out to be his last years. He was that happy warrior who truly did travel in the land of hope.

I end this brief memorial as I began it, with a quotation from Justice Thomas, who, more than anyone else, knew the kind of path that Greg had chosen and the character he embodied:

“Be true to your faith and to your beliefs, hold onto your hope. Don’t let others take your joy. Treat others as you would like to be treated. Help others along the way.”¹⁴

In words that might have been fashioned with Greg in mind—although Justice Thomas did not know Greg at the time they were written—they highlight what made Greg so special and why so many will proudly keep Greg alive in their hearts and minds for many, many years to come. Greg

of market desires”). As noted by Justice Thomas, “[t]oday, the law reviews are filled with interdisciplinary studies, critical studies, oppressed group studies, anything but legal studies Now, I am sure there is something of value in these articles, at least for the person who writes them, if not for the person who reads them.” Clarence Thomas, *Speech*, 25 CUMB. L. REV. 611, 615 (1995). And, Greg might add, let us not forget the value to the one who must edit them.

14. Clarence Thomas, *Commencement Speech*, 74 N.D. L. REV. 435, 438 (1998).

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left us all too soon but what he left to us is a gift more precious than gold: civility.