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Elite Appellate Lawyers Dominate Texas Politics

by JAMES C. HO

As 2014 comes to a close, Texas is witnessing a dramatic transition in its political leadership. That includes the leading lawyers who will help steer our state in the years to come.

Media coverage of this transition has focused largely on political trends. The press has noted, for example, that incoming Governor Greg Abbott has hired several long-time aides from the Attorney General's office—while soon-to-be Attorney General Ken Paxton is poaching from the staff of U.S. Senator Ted Cruz.

APPELLATE

But that coverage misses an important legal trend. The top legal positions in government are increasingly drawing from one particular specialty—appellate litigators—and from a narrow band of that specialty at that.

Few legal jobs are more demanding

than counseling a powerful political official. These lawyers must provide substantive advice and strategy in the most difficult areas of constitutional and public law—matters that often lack clear precedent. The world is scrutinizing and questioning their every move. And the pace is unrelenting. Virtually every major legal issue on their desk presents a perfect storm of big stakes, powerful constituencies and ambiguous law.

Lawyers of all stripes have held these positions, and performed them well. Yet the state's leadership is increasingly turning to leading members of the appellate bar to fill these top positions—especially those with deep experience in both the chambers of top appellate courts and in the halls of government. In particular, they are turning to alums of the Texas Solicitor General's office, the state's special corps of appellate litigators.

This is not surprising on a number of levels. First, it is a small fraction of the bar that has experience handling this kind of demanding work. Appellate



lawyers play many roles, but it is the knottiest of purely legal controversies that compel clients to retain an elite appellate specialist.

Moreover, the state's leadership knows this full well. U.S. Senators John Cornyn and Ted Cruz and incoming Governor Greg Abbott are all distinguished members of the appellate bar—with 12 years of appellate judicial experience and

12 arguments before the U.S. Supreme Court among them.

So earlier this month, the Abbott transition team announced that the general counsel to the incoming governor will be former Texas Assistant Solicitor General Jimmy Blacklock. Blacklock has personally litigated several of the state's most sensitive appellate matters over the past few years, including constitutional challenges to Texas abortion, redistricting and marriage laws. He previously served as a law clerk to Judge Jerry Smith of the U.S. Court of Appeals for the Fifth Circuit.

Similarly, the Paxton transition team announced Brantley Starr as the new Deputy Attorney General for Legal Counsel—a position frequently described as the Attorney General's general counsel. Like Blacklock, Starr is a well-known and regarded alum of the Texas Solicitor General's office. He is a former law clerk to Texas Supreme Court Justices Don Willett and Eva Guzman.

Several other senior legal positions in state government have yet to be publicly announced, but do not be surprised if they too are filled by alums of the Texas Solicitor General's office.

Appellate litigators at the Texas Solicitor General's office have also branched out to take leadership positions outside of Texas. Former Texas Assistant Solicitor General Lawrence VanDyke left Austin to become solicitor general of Montana, and earlier this month, he was named solicitor general of Nevada. Likewise, former Texas

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Assistant Solicitor General Kyle Duncan served as the top appellate lawyer for Louisiana. And of course, there is no better example than U.S. Senator Ted Cruz, the longest serving Solicitor General in Texas history.

This trend is sure to continue under the leadership of incoming Texas Solicitor General Scott Keller. Keller has previously worked under two former Texas Solicitors General—Greg Coleman and Ted Cruz—as well as under a former U.S. Solicitor General. He clerked for U.S. Supreme Court Justice Anthony Kennedy and Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit.

Keller is also the third chief counsel of the U.S. Senate Subcommittee on the Constitution to later become a solicitor general—a trend that started with Paul Clement, who became U.S. Solicitor General after serving as chief counsel under Senator John Ashcroft. And appropriately, Keller's successor as subcommittee chief counsel to Senator Cruz is yet another rising star Texas appellate litigator—Ryan Newman, a former law clerk to Justice Samuel Alito.

None of this is a coincidence. There

are few places outside certain elite groups in government—such as offices of solicitors general and appellate units under United States Attorneys—where lawyers can count on a torrent of cutting-edge appellate work. It is an even smaller fraction of the appellate bar that is regularly exposed to the kinds of complex constitutional and public law issues that our political leadership routinely grapples with.

One of the best ways to hone one's craft is repetition. Yet there are few places where an aspiring appellate lawyer can get those “reps” on a regular basis.

As a citizen of Texas, I want the state's best and brightest minds serving at the highest rungs of government. As an alum of the Texas Solicitor General's office, I couldn't be prouder of my former colleagues. 



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