

# COUNSEL FOR THE SITUATION

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SHAPING THE LAW TO  
REALIZE AMERICA'S PROMISE



WILLIAM T. COLEMAN  
WITH DONALD T. BLISS

FOREWORD BY JUSTICE STEPHEN BREYER

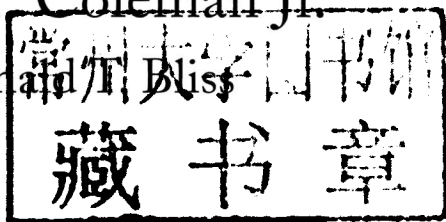
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REALIZE AMERICA'S PROMISE

William T. Coleman Jr.

*with Donald T. Bliss*



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COUNSEL  
FOR THE  
SITUATION

# FOREWORD

*Stephen Breyer*

WHEN BILL COLEMAN TRIED OUT for the swim team at his Philadelphia high school, the school eliminated the team rather than risk racial integration. That is the world in which Bill grew up. And that is the world that Bill Coleman helped to change. He did so directly when called upon for help by Thurgood Marshall. And he did so indirectly through the power of example—the example of a man of unusual ability who became successful as a skilled attorney, a wise counselor, and a dedicated public servant.

Bill Coleman's story is one that younger generations should mark and inwardly digest, lest they forget the pioneers who helped to make a better America possible. That story also shows us something important about the legal profession, helping us understand how in the mid-twentieth century an individual could become, at one and the same time, a great lawyer, a wise statesman, and a leader in the fight for equal rights.

Coleman started life with enormous natural abilities, including intelligence, perseverance, and the capacity for hard work. After graduating summa cum laude from the University of Pennsylvania, he entered Harvard Law School, where he became a member of the *Harvard Law Review*. His law school education was interrupted by World War II when he volunteered for service in the Army Air Corps. After the war, he graduated from the law school first in his class, earning the Fay Diploma. He had just begun to serve as a law clerk for Judge Herbert Goodrich of the Third Circuit Court of Appeals when he received a call offering him a clerkship with Supreme Court Justice Felix Frankfurter. Bill accepted. He spent the next year at the Court, learning from Justice Frankfurter about the law, discussing law and literature (including Shakespeare and Pushkin) with his fellow clerk (and later attorney general) Elliot Richardson, and even arguing fine points of constitutional theory with Justice Hugo Black, whose views differed considerably from those of Justice Frankfurter.

Bill then entered private practice, where he thrived. He enjoyed a variety of assignments. An early one involved addressing an entertainment star's fear that someone else had received higher billing. Ever practical, Bill simply took a ladder to a Broadway theater at three o'clock on a rainy morning, put it up against the marquee, and measured the height of the letters in Cole Porter's name. Bill is pragmatic. He once solved a complex legal problem by insisting that his clients, worried about which country's laws would govern a particular contract, sign the contract over the Pacific in midflight. Bill is highly skilled. He argued nineteen cases in the Supreme Court. Bill is wise. That fact is known to the many young lawyers who have seen him as a mentor as well as to the many clients who have sought advice from him on more than purely legal issues.

At the same time, Coleman's career extends well beyond that of private practitioner. He is one of that breed of (now sadly vanishing) statesmen-lawyers whose careers combine private practice with public service. They include William "Wild Bill" Donovan, Henry L. Stimson, Dean Acheson, Lloyd Cutler, and many others who took to heart Roscoe Pound's admonition that law is a profession "imbued with a spirit of public service." That public service, in Bill Coleman's case, included work with the Warren Commission, an appointment as our nation's secretary of transportation, and membership on numerous local, state, and national public and private advisory boards, commissions, foundations, and similar entities. To each he has devoted his intelligence, energy, and imagination, always looking for workable solutions.

I saw him at work firsthand when the government was considering whether to grant landing rights for the Concorde, the British-French airplane that both flew and boomed supersonically. Bill, then transportation secretary, resolved the controversy by presiding personally over lengthy public hearings about landing rights in Washington, D.C., and New York. By opening up the process, by giving everyone a chance to be heard, he helped ensure acceptance of a compromise solution that might otherwise have satisfied no one.

Yet to describe Coleman simply as a private lawyer and public servant would be highly misleading. Bill is a man of color who grew up at a time when that fact meant hardship, humiliation, and prejudice at the hands of a society that embraced not simply invidious discrimination but legalized segregation as well. Those horrors, of course, touched Bill's life directly: An army that segregated units by race and refused officer club membership to those of the "wrong" race; a national capital where a law clerk at the Supreme Court found it difficult to find a restaurant where he and his fellow clerks could have lunch together; a legal profession that initially denied him a job, despite his stellar Harvard Law School record and his Supreme Court clerkship; and more, much more, and worse besides.

What was Bill's reaction? Don't agonize, just get down to work, let's end this evil, and let's cure society of that malignant disease. His method: To use what was best about America, the law's commitment to equal justice, to end what was worst about America, its blatant racial discrimination. That is why Bill helped write the brief in *Brown v. Board of Education*. That is why he agreed to fight for integration by representing minority clients in the *Girard College* case, which he won. That is why he became chairman of the NAACP Legal Defense and Educational Fund. That is why he became a leader and an integral part of the civil rights struggle, which has transformed the culture of our nation. At the same time, Bill enabled others to point to him, to his talents, to his achievements, to his having crossed what had previously seemed all-white thresholds—the *Harvard Law Review*, the Supreme Court clerkship, the president's cabinet—to illustrate that racial discrimination and prejudice were not only morally and legally wrong but simply absurd in depriving the nation of a tremendous pool of talent and character.

Perhaps now it is easy to understand why I hope many will read this book. Bill Coleman's story is that of a man who became successful in his career while making an enormous contribution to American life—all in the face of formidable obstacles. He never gave up on America. He never considered working outside its legal system. And he led by example. Anyone interested in the history of the civil rights movement will consequently find in Bill Coleman's story an explanation of how brilliant and tenacious lawyers brought about a quiet revolution in the law and an inspiration for future generations upon whose shoulders fall the many challenges confronting our society today.

Salvador de Madriaga, a great Spanish patriot, once argued for breadth of vision, breadth of learning, breadth of spirit, and breadth of experience by cryptically warning that "he who is 'nothing but', is 'not even.'" Bill Coleman must have taken that advice to heart. It is no wonder this nation awarded him its Medal of Freedom. Elliot Richardson, discussing how Bill Coleman's friends feel about Bill, described him as "an individual of strong loyalties, deep commitment to human values, and solid practical judgment. Harnessed to a clear and analytical mind and unflagging energy, these qualities make him an effective force in all of the many arenas in which he engages. Add a quick sense of humor and a gift for friendship, and you have in every sense a man for all seasons."

I would add the following: After Bill Coleman completed his clerkship at the Supreme Court, Justice Frankfurter sent him a letter, which said, "What I can say of you with great confidence is what was Justice Holmes' ultimate praise of a man: 'I bet on him.' I bet on you, whatever choice you may make and whatever the Fates have in store for you." This book makes crystal clear the accuracy of Justice Frankfurter's judgment.

## PROLOGUE

# Achieving the American Dream as Counsel for the Situation

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*Dream no small dreams for they have no power to move the  
hearts of men.*

—GOETHE

AT SOME POINT EACH OF US enters the stream of history. We have no control over the time or place, or the sandbars, boulders, or floating obstructions we may confront along the way. I entered the stream on July 7, 1920. I began to chart a course through most of a transitional century, a time unique in the annals of American and world history. This was the century in which a youthful pluralistic nation began to fulfill the promise of its declaratory charters, recognizing the rights of all its citizens to reach their full potential and resolve their differences within a framework of law. Fortunately for me, it was the time when persons of extraordinary vision and great charisma actually changed the course of history's stream—Eleanor Roosevelt, Dwight Eisenhower, Earl Warren, Lyndon Johnson, Charles Houston, William H. Hastie, and Thurgood Marshall, to name but a few.

As the doors of opportunity slowly began to open, I chose a career in the law. I have sought to uphold the highest traditions of my profession—as “counsel for the situation” in the private practice of law, through public and community service, as an innovative advocate helping to shape the law, by bringing my lawyer’s skills to the corporate boardroom, and, perhaps most challenging of all, by attempting to balance (not always successfully) family with work. Among the high priests in a secular society, lawyers often are the means by which we resolve conflict peacefully. We are the grease that lubricates the engine of a dynamic, growing economy. The leading members of the bar are “experts in relevance” who can tackle complex problems with analytical skill and commonsense judgment. In this age of increased specialization, volatile global economic cycles, and intensely competitive legal practices, I hope we never lose the vision of the special role lawyers perform in a regulated private economy and diverse free society. That role often calls on us to undertake voluntary legal services and serve the public in advisory and full-time capacities.



It has been my privilege and luck to know and advise in varying ways presidents of the United States of both political parties, to serve in President Ford's cabinet as secretary of transportation, to argue nineteen cases in the Supreme Court of the United States on issues as diverse as antitrust, energy, banking, and constitutional law, to represent leading corporations in major mergers and "bet-the-company" litigation, and to serve as a director of some of America's great corporations, among them IBM, Chase Manhattan Bank, Pan Am, CIGNA, and PepsiCo.

I was also privileged to play a part in the peaceful legal revolution in which the Supreme Court finally faced up to the U.S. Constitution's unfulfilled promise of equality of opportunity, resurrecting its somnolent post-Civil War amendments and eradicating American-style apartheid. Like my mother and father and their parents and grandparents before me, I firmly believed that it is incumbent on each generation not only to challenge the establishment but, more important, to become a creative force within it.

The path that I have taken, therefore, is somewhat different—although hardly unique—from that of most civil rights leaders and politicians of color with whom I have worked, whom I greatly admire, and to whom all Americans are much indebted. Through their struggles, opportunities have opened up for Americans of color and for many others as well. As the barriers came down, I found myself well prepared to seize the unprecedented opportunities presented at that extraordinary time in history. My greatest ambition was to be a practicing lawyer in all the many dimensions of that profession, in the courtroom, in the boardroom, and in the corridors of government. I wanted to be an integral part of an interconnected global economy, reaping the just fruits of my labor.

Nurtured by a strong and loving family, including my wife and children, I had had ingrained in me the values of insatiable curiosity, hard work, and the best possible education obtainable through talent and effort. My parents were proud to be Americans and proud of the particular, significant heritage they each brought to the American experience. They contributed greatly to their community, instilled in me a strong sense of justice, and taught me to value the diverse contributions of many cultures and races in the long march of history and in our great nation.

As Philadelphians, the ringing words of the Declaration of Independence—that all men are created equal—resonated for my parents as an unfulfilled and incomplete promise, a buoy toward which the ship of state would sail in search of a more perfect union. The compromised U.S. Constitution—strangely silent on the singular sin of slavery—was also drafted in Philadelphia. It established a structure of government that could lurch forward with stops and starts and occasional reversals toward a more just and fair society,

tempering legislative and executive power with an independent judiciary that was intended to apply wisdom and experience to the resolution of conflicts and the interpretation of the Constitution. The first ten amendments (the Bill of Rights) fleshed out the lofty promise of the Declaration of Independence, initially mostly for the benefit of propertied white males.<sup>1</sup>

Still reeling from the festering wounds of the great Civil War, the states ratified the Thirteenth, Fourteenth, and Fifteenth Amendments, expanding that promise to men of all races and eventually to women. Yet the federal government—all three branches—fell into a deep slumber, anesthetizing the post-Civil War amendments through neglect and subservience to anachronistic theories and traditions like racial inferiority and segregation, nurtured—one recalls with regret—by some of our great writers, philosophers, scientists, political and religious leaders, and academicians.<sup>2</sup> It took almost two centuries and a new generation of leadership to translate the vision of equal opportunity imbedded in the Declaration of Independence and the amended Constitution into a legal framework in which all American citizens, regardless of race, place of birth, religion, ethnicity, or gender, could and most often do participate fully in a working democracy and free market economy.

As I entered the stream of history, racial discrimination permeated both public policy and private decisionmaking throughout the nation. My own experience was usually with the more subtle brand of Yankee racism. Having graduated first in my class at the Harvard Law School, served my country as a U.S. Army Air Corps officer in World War II, and clerked for two distinguished jurists, Judge Herbert F. Goodrich of the U.S. Third Circuit Court of Appeals and Justice Felix Frankfurter of the United States Supreme Court, I nevertheless pounded the pavement in my hometown of Philadelphia, in Boston, in Washington, and on Wall Street in search of a law firm job. I had no offers and was rarely granted an interview. But the times they were a-changin'.

During my young adulthood, giant visionaries again emerged to lead us toward that more perfect union. I was blessed with the opportunity to get to know and work with many of these great leaders, some of whom are icons of American history and others whose behind-the-scenes work has never been fully appreciated or even completely disclosed. They became mentors, advisers, competitors, and colleagues as I pursued my legal career. They were Democrats and Republicans, politicians and professors, counselors and corporate executives, conservatives and liberals, and women and men of all colors and creeds. Despite their differences, they shared a strong commitment to a healthy democracy dependent on participatory decisionmaking by all Americans. They shared the strong conviction that individual talent, brilliance, and effort can and will change the course of history.

I empathize with the view of Chief Justice John Marshall: “The events of my life are too unimportant and have too little interest for any person not of my immediate family, to render them worth communicating or preserving.”<sup>3</sup> Yet many friends and colleagues have suggested that I owe it to the nation and future generations to record both the opportunities presented to me and the hurdles along the way, as well as the extraordinary contribution of those in past and present generations who made those opportunities possible.<sup>4</sup>

It is my earnest hope that future lawyers will learn from my successes and failures, that historians will find fresh insights on the period when America’s promise of equality of opportunity was largely embraced in the law and accepted by just about all Americans, and that the essential truth will again be reaffirmed that presumptions about character and ability should never be based on shades of skin color.

As I look back over my ninety years, I am grateful to have entered the stream of history at the time I did. During this short period of time we have learned that the nation and its citizenry gain when Americans of all races, genders, and ethnicities enter the current of America’s flowing, ever-expanding stream. I am grateful for my parents and for so many transformative leaders who taught me this lesson and took a personal interest in my career.

And I am grateful for the American people, who, sometimes begrudgingly and not always peacefully, have nevertheless generally come to accept that the promise of America’s dream will be realized only when all of its citizens are able to participate fully in democratic self-government and a competitive, dynamic, free economy.

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## ONE

# Mr. Coleman Goes to Washington

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*Government is a trust, and the officers of government are trustees; and both the trust and trustees are created for the benefit of the people.*

—HENRY CLAY, 1829

ONE THURSDAY AFTERNOON IN LATE 1974, I was sitting in my law offices at the Dilworth firm in Philadelphia, preparing for a court hearing. My assistant buzzed me on the intercom: “It’s Mr. Donald Rumsfeld on the line.”

“I’ll take it,” I said. I knew and admired Don Rumsfeld from my days on President Nixon’s productivity and price commissions. When Gerald Ford assumed the presidency after Nixon’s resignation, Rumsfeld became his chief of staff. That afternoon, in his usual brisk but courteous manner, Rummy told me that President Ford wanted to see me in the Oval Office the next afternoon.

I was in the middle of seeking an injunction against the local transit unions on behalf of the Southeastern Pennsylvania Transportation Authority, the regional transit authority. But one does not lightly turn down an invitation from any president of the United States. I had great respect for Gerald Ford, with whom I had worked closely when he was a member of the Warren Commission, formed to investigate the assassination of President Kennedy, and I was one of its six senior legal counsel. Ford was a decent, bright, down-to-earth, practical politician, and I thought he had made a great start as president under most difficult circumstances. While Rumsfeld did not say why the president wanted to see me, I knew that Ford was in the process of assembling his own team, consisting of some veterans from the Nixon administration, like Secretary of State Henry Kissinger, who would provide continuity in our delicate international relationships, and some new faces who would enable Ford to put his own stamp on the presidency and differentiate his tenure, in style and content, from that of his predecessor.

On the train down to Washington, the next morning, I rehearsed in my mind what the president might say to me and how I should respond. I was

content with my responsibilities at the Dilworth firm as the head of its thriving litigation department, with the challenging corporate, securities, labor, regulatory, and appellate work that I was doing there, and with the private corporate boards on which I was sitting. I felt that I was reaching the pinnacle of my lifelong ambition to become a successful lawyer in my hometown, Philadelphia. As chairman of the NAACP Legal Defense and Educational Fund, I was fully engaged as a volunteer in the continuing legal assault on racial discrimination, following in the footsteps of my mentor Thurgood Marshall, then a justice of the U.S. Supreme Court. From a more practical standpoint, I was paying hefty tuition bills for my two older children, who were at Yale Law School, and my younger son, who was attending Williams College. I shored up my resolve not to accept a full-time position in the Ford administration if one were offered and hoped that what the president had in mind was an advisory role, perhaps on a commission to address the challenges of stagflation, the high inflation and jobless rates that haunted the economy.

When I arrived at the Oval Office at 2:00 p.m. Friday afternoon, President Ford greeted me warmly. We chatted briefly about the findings of the Warren Commission. In 1963 Ford had raised some of the toughest questions about whether there had been a foreign conspiracy involving the Cubans or the Soviet Union in the Kennedy assassination, which was my primary area of investigation. The president then abruptly changed the subject. He came right to the point: "Bill, I would very much like you to join my cabinet as secretary of housing and urban development."

I was flattered. But in some ways the president's offer of this particular job made it easier for me to stick by my resolve and turn down full-time government service. President Johnson had appointed the extraordinarily well-qualified Robert Weaver as secretary of housing and urban development, the first American of color ever to be appointed to a cabinet position. (That is, unless we are able to verify what some historians recently have reported, that Alexander Hamilton, born on the Island of Nevis in the Caribbean, had some Negro blood. If so, then—by the peculiar U.S. tradition in defining race—George Washington appointed the first American of color to the cabinet when he selected Hamilton, who became an outstanding secretary of the treasury. I would be proud to claim him.)

In some respects, the offer of the HUD post was unsettling. Was the department considered to be the "black" cabinet chair at the table? Candidly, I was then no fan of HUD—or of federal housing policy, for that matter. America's inner cities were cluttered with federally subsidized high-rise housing projects that spawned vertical black ghettos—the result of well-intended but ill-conceived policies dating back to Franklin Roosevelt's administration that had created almost insurmountable obstacles for those of us who fought to

desegregate schools and communities. It was easy for me to decline the offer, politely pleading my financial obligations to three university-aged children.

President Ford seemed disappointed but then asked me tentatively if I would feel the same about being the ambassador to the United Nations. He noted my service as an alternate delegate to the twenty-fourth U.N. General Assembly and my work with Henry Kissinger in freeing Namibia from South Africa. It wasn't so much a firm offer as an exploration of my resolve. Again, I said that I simply wasn't in a position to take a full-time post in government at that time.

With a discouraged look on his face, the president rose from the couch, walked toward the Wilson desk (which dates back to President Grant's administration), turned abruptly, and said, "Bill, you were a pilot. You represent public transit companies. You are on the Pan Am board. How would you feel about secretary of transportation?"

I was caught off guard and feeling a little guilty about my lack of responsiveness to the president's persistent interest in recruiting me for his administration. Moreover, I was not about to admit that I didn't even know that there was such a thing as the U.S. Department of Transportation. My resolve began to crumble, and I said, with some hesitation in my voice, "Well, Mr. President, I'll have to think about it. Can you give me a couple of days to think it over and discuss it with my wife, Lovida?" He agreed, and the meeting ended on a positive note.

When I discussed the offer with my family over the weekend, it was fortunate that my daughter, Lovida Jr., was home from Yale Law School. She was, as she always is, direct and to the point: "Look, Dad, there probably have been only about two hundred Americans in the history of this nation who have served in the cabinet—and only one other black person that we know of. I really don't see how you're qualified to be secretary of transportation, but it's a great privilege to be offered the job. It's a chance for you to do something important for your country—especially now, when the nation is going through this post-Watergate trauma."

"President Ford is a decent and honest man," she continued. "He graduated from my law school, and he's trying to restore trust in government. You know, Dad, several of my professors at Yale have said that Ford got the highest grade in the course on legal ethics. He needs to assemble his own team, and he obviously thinks you can help him bring back integrity and quality to the federal government. How can you turn him down?"

First thing Monday morning I called Rumsfeld. "If the President still wants me," I said, "I will serve as secretary of transportation."

Rummy sealed the deal. As it turned out, President Ford appointed Carla Hills as secretary of housing and urban development. She did a superb job,



much better than I would have done. I hope that my obstinacy did not deprive her of the opportunity of being secretary of transportation. The HUD building was across the street from the Department of Transportation, and Carla and I worked on many projects together during the Ford administration; in subsequent years she and her husband, Rod, became close personal friends of my family. Rod is a client, and their son-in-law, Steve Bunnell, is one of my outstanding law partners.

A creature of Congress, President Ford knew the importance of keeping the congressional delegations informed about prospective appointments. He immediately called Senator Hugh D. Scott, a close friend of my father's, who, I suspect, leaked the news to one of Philadelphia's newspapers. That was a bit unsettling because I was in active negotiations with the transit unions on behalf of the regional transit authority at that time. On the other hand, the newspapers put a more positive spin on the prospective appointment than the FBI, whose investigators traipsed around my Mount Airy neighborhood questioning curious neighbors about my character and integrity. With the FBI clearance completed, the president sent up my nomination, and, after some courtesy visits to key senators, I testified before the Senate Commerce Committee, which reported favorably on my nomination, without objection, and the Senate confirmed my appointment by acclamation. (My daughter remarked that nobody objected because I hadn't done anything worth objecting to.)

Shortly thereafter my beloved wife, Lovida, and I packed our bags and eagerly headed down to Washington.