‘Social Grace’ Case Raises Question of Subtle Sex Bias in Workplace

Al Karsen
'If it helps others, fine. But let me first consider myself. Let me get this yoke off my back... There's got to be some life before I die.'

FRANK TEAGUE

DETERMINED TO BE HEARD

Four Americans and their journeys to the Supreme Court.
By William Glaberson

HEY ARE THE POWERFUL and the powerless, the popular and the scorned. A guild of stubborn optimists who test the limits of the system for the rest of us, they take their grievances, as they were taught they could in America, as far as you can go to the United States Supreme Court.

Each year, there are fewer than 200 of them. Some are martyrs. Some are scoundrels. Decisions named for them become the law of the land: Dred Scott. Brown v. Board of Education. Miranda.

For the new Supreme Court term that begins tomorrow, the justices have already selected 105 of the cases that they will hear this year. And behind the legalisms of many of them are people who, like the four profiled here, share a belief that their causes are just and the conviction that the system will, with enough persistence, accommodate them. "This is America and you have to believe that what's right will happen in the end," says Melody DeShaney, a Wyoming woman whose case is one of the 105.

With rare exceptions, it takes years for a case to climb its way up the Federal or state court systems. Still, 5,000 or so cases annually raise thorny enough Federal legal questions that they get to the High Court, and the justices then begin their own selection process. Many of the cases brought by corporations and state and local governments, civic groups and other organizations, as well as individuals, make the justices' final cut because lower courts have worn out legal combatants without developing any consistent national law on a pressing issue.

For some of those individuals who have made it to the High Court this year, perseverance has exacted its cost. Sometimes, says Frank Dean Teague Jr., an inmate in an Illinois prison, he has been overwhelmed by the latest bit of news of his case on the long road to the Supreme Court: "There have been times when I haven't been able to talk, I want it so badly to happen. Then, it's more of the same thing: another continuance, another rejection, another hearing."

And though it is too early for these people to measure, sometimes those who push the system as far as it will go are permanently marked by the experience. The convicted rapist Ernesto Miranda never made much of his life beyond giving his name to the landmark 1966 ruling that declared suspects are entitled to be informed of their rights when they are arrested. But when he died, stabbed in a barroom fight 10 years after the High Court decision, the police found two small cards in his shirt pocket, printed with the rights of suspects. Miranda cards, police call them.

In 1962, the case of a spindly drifter named Clarence Earl Gideon persuaded the Supreme Court that all people accused of serious crimes have the right to be represented by counsel. "I believe that each era finds a improvement in the law," Clarence Gideon wrote to Abe Fortas, the lawyer who argued his case in the Supreme Court. "Maybe this will be one of those small steps forward." Gideon might have been writing for the other members of his small fraternity. He might have been writing for the four people whose stories follow.

"SOMEHOW, I SHOULD HAVE KNOWN," SAYS Melody DeShaney.

It is partly self-punishment, partly penance, as almost everything has been since the phone call in 1984: Her little boy wasn't expected to make it through the night, the voice on the line said.

She had given Joshua to his father after their di-

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'I just believe that every person makes a difference.... It's important to how my children see themselves. It's important to how a whole lot of people... see me.'

ANN HOPKINS

marriage, just after his first birthday, and then she didn't see him again until it was too late. A few times, she went looking in Wisconsin, where her former husband lived. But it was far from her home in Cheyenne, Wyo., and she says her former husband never told her where he was. For those three years, though, she thought that Joshua was 'having a nice kid life,' the kind of life that she felt too alone, too poor and too young to give him.

It wasn't a nice kid life. Joshua survived that night, but his brain was so badly damaged by what the authorities say was abuse by his father that he is severely retarded and will need to live in an institution for the rest of his life. His father, Randy DeShaney, always denied causing Joshua's injuries, but he did not contest child-abuse charges. Convicted, he was sent to jail for two to four years. He has recently been released.

In Wisconsin, in the terrible days after the phone call, Melody DeShaney began to learn more than she could bear to hear about Joshua's life away from her. And ever since, she has been trying to make things as right as she can for him. That, for her, is what her Supreme Court case stands for: it is a mother's way of trying to do right by her child.

She sued the county welfare department in Wisconsin that was supposedly watching over Joshua. She could have sued under state personal-injury law, but her lawyer told her Wisconsin would limit her damages to $50,000. Joshua's perpetual care will take much more than that. So, instead, lawyers drafted the federal suit of Joshua and Melody DeShaney, contending that once the state learns a particular child may be the victim of abuse and takes some action on the child's behalf, a special relationship begins, giving the child a constitutional right to be protected by the state. A few courts have recognized such a right in cases involving extreme misconduct by welfare authorities. So the state, the lawyers say, by failing to protect Joshua from his father's abuse, is therefore liable. Asking for $30 million on behalf of Joshua and his mother, they have argued that abused children all over the country need special protection. But defeat has followed defeat in this case; the lower courts have refused to acknowledge a constitutional right for abused children.

For Melody DeShaney, now 29, each twist and turn in the case brings the tragedy back into sharp focus. But even the anguish that the case keeps refreshing, she says, helps her live through the days: "Maybe it is a little bit of a healing process to be able to fight back. At least you're doing something."

Her lawyer, Donald J. Sullivan, says that, from the start, DeShaney focused on the other children her case might help by making welfare workers more attentive. Says Sullivan: "Part of it for her is: 'Even if I can't help Joshua directly, I'm going to make sure that there is not another Joshua.' It's a common symptom of every trauma survivor: 'Never again.'"

The day after she went to the hospital in Wisconsin, Melody DeShaney sat down with a state social-service worker and learned that between January 1982 and the day in March 1984 when Joshua's brain stopped working, the authorities in Wisconsin had recorded Joshua's suffering with bureaucratic precision.

Randy DeShaney's second wife, from whom he is now separated, told the police that Randy hit the boy and Joshua was "a prime case for child abuse." In frequent hospital visits, DeShaney and the new woman he was living with explained that the injured child was accident prone. There were reports from doctors saying they suspected child abuse, and there
was even a brief time when the Winnebago Department of Social Services took Joshua away from his father.

But Joshua was back soon with his father and the Social Services department continued to compile its 'careful records. On one visit, Ann Kemmeter, the social worker on the case, noticed a bump on the child's forehead, the notes in the file show. On another, Kemmeter was told that Randy had taken Joshua to the hospital with a scratched cornea.

Once Joshua had "a scraped chin that appeared to me to look like a cigarette burn," Kemmeter entered in the growing file. Later that month, Joshua was treated in the emergency room for a cut forehead, a bloody nose, a swollen ear and bruises on both shoulders. The doctors said they believed he was the victim of child abuse.

On March 7, 1984, Kemmeter made another home visit. Joshua's father and his girlfriend told her that the boy had fainted several days earlier for no apparent reason. They said the boy was taking a nap. "I don't know why," she wrote in her file, "but I did not ask to see Joshua."

The next day, Joshua was unconscious when he entered the hospital. When they conducted the emergency brain surgery, doctors found evidence that Joshua's head had been injured repeatedly over a long period of time. His body was covered with bruises.

"I just knew the phone would ring someday and Joshua would be dead," Ann Kemmeter told Melody DeShaney when they met. DeShaney testified in a pretrial proceeding. Kemmeter, according to her lawyer, denies having said this. Nonetheless, no one from the state had ever called Joshua's mother and no one stopped Joshua's father from taking his son's future away.

For four years now, the legal fight has occupied much of Melody DeShaney's attention. She has, she says, few friends. A second marriage is rocky, and she is not interested in the low-paying jobs she has held. She spends a lot of time fantasizing about the care she will be able to give her son when the case is over. She likes to think about bringing Joshua home to Cheyenne from Wisconsin, where he is currently in a state-supported institution.

"Josh doesn't even know I'm his mother," she says. "He doesn't recognize anybody. But I still feel in my heart that at least Josh will know that there is someone there that really loves him."

After Joshua's hospitalization, Melody DeShaney received counseling from a therapist in Cheyenne, Linda Brekke, who believes DeShaney's toughest days are ahead of her. One day, Brekke says, the case will end, and one way or the other, the question of Joshua's care will be resolved. And then, when there is no more fighting to be done, Melody DeShaney will have to face something that is even harder than what she has been through already. She is going to have to face the future after the Supreme Court case. "When this is all over," says Brekke, "what happens to Melody? What happens to Melody?"

THERE ARE SOME PRISONERS Patricia Unsinn has represented in her 11 years as a public defender who don't seem to care about their cases. Some have given up on freedom. Some say they can't afford to hope. Frank Teague is not one of those.

In her Chicago office, Unsinn has a foot-wide file of legal suggestions and other notes from the man whose case she is taking to the Supreme Court. In more than six years of work on his appeals, there has hardly been a week that he hasn't called from one correctional institution or another. He'll want an update on his case. Or he'll want to talk about a precedent he has discovered in the prison law library.

"It's probably an obsession," she says. And Teague
In the case of Frank Teague, who was convicted of armed robbery, the Supreme Court held that all defendants accused of serious crimes have the right to legal representation.

So the young Teague, who was already a bit of a loner, had very little in common with the big-city street kids he met in jail.

After seven years in jail, a Federal appeals court ruled that it is a denial of equal protection of the law for a prosecutor to use race as a ground for excluding blacks from juries. But the court also ruled, in a later case, that many black prisoners, who had raised the jury issue while the 1986 case was pending could not take advantage of it to have their own convictions reviewed.

The oldest of three children, he was raised in comfortable surroundings in Moraine, Ill. His was one of the few black families in the middle-class city in those days.
preme Court case is the ulti-
mate expression of his con-
vict's code: You keep to your-
self, you work for yourself, you
do everything you can to
got. If all you had to do was
mean something to someone
other than Frank Teague,
convict A83456, that's all
right with him. But that is not
what it is all about, he ex-
plains: "As I told my mother
a few weeks ago, if it helps
others, fine. But let me first
consider myself. Let me get
this yoke off my back."
"There's got to be some life
before I die," he says. "That's
one of my prayers before I
go to sleep every night. Don't let
me die in this hellhole."

ANN B. HOPKINS is
finally comfortable. It
began after she
into a conversation in her
well-appointed town house in
Washington. Her three young
children have been running in
and out of the house, asking
the woman whose name is likely
to stand for one of the major
sex-discrimination decisions
in years has a cigarette in
one hand and a beer in the other.
And the words are coming
faster than they did at first,
when she kept herself, as she
usually does, to herself. Now, she is
bolder. Her speech is peppered with her
own peculiar blend of Texas-
army-brat can "do" and the Fortune-500-speak that has
become the national lan-
guage of the ambitious: Set-
backs are "opportunities to
manage." There are always
"downside risks" but a busi-
ness, as in life, there are
"hills to die on" for people
who have the grit to get
tings done. "I think of my-
self as tough-minded, which
different than tough," she
says. "To be tough-minded is
to challenge whatever the as-
sertions are."

Hopkins, in other words, is
being the person whose shrewdness and self-confi-
dence impressed her bosses
as she made her way up the
ranks of one of the mainstays of the financial estab-
lishment, the Big Eight ac-
counting firm of Price Waterhouse.
Six years ago, at 38, she
was "overconcerned with
an outcome that is unac-
ceptable to her."

To Hopkins, who now works
her career. So, when she
decided to sue Price Water-
house, it wasn't because of a
movement. It was to try to
win the case she thought she
deserved, or at least to under-
stand why she had suddenly
stalled.

The case, she feels, has
given her the answers. At the
trial in 1985, she says, she
finally understood what had
taken place as she listened to the
testimony of her side's ex-
pert witness, Dr. Susan
Fiske, a psychologist at the
University of Massachusetts.
Dr. Fiske talked about the
work she had done studying
sexual stereotyping and
the conditions under which she
believes it flourishes. When the
consequences are just a few women
among many men, she said, forceful
personalities are often seen as
abrasive, and some men's
negative reactions can be ex-
tremely intense.

But even if Ann Hopkins
felt vindicated by her new in-
sights, the case she had
started could not end. Both
sides appealed different
parts of the trial-court ruling.
Hopkins won her legal points,
but the judge did not award
her damages, saying she had
left the firm voluntarily after
she had been informed her
partnership application was
"on hold." (Even if the Su-
preme Court upholds the
claim that Hopkins was a vic-
tim of sex discrimination, how
much she might be enti-
tled to in damages is a sepa-
rate legal issue.)

When she won in the ap-
calls, Price Water-
house decided to go to the na-
tion's highest court, arguing
that its decision to deny Hop-
kins a partnership had been
at worst, one of mixed mo-
tives. If there had been some
unconscious sex stereotyp-
ing, the firm said, there
were

To Hopkins, who now works
the World Bank as a
budget planner, the battle re-
mainstays of the things in the Price Water-
house "briefs." And the
stakes of fighting the case,
Hopper says, have added to
her career. "It's gotten more
and more difficult for her
because of the nature of
the things in the Price Water-
house," she says.

To Hopkins, who now works
for the World Bank as a
budget planner, the battle re-
mains intensely personal:
"It's important to how my
children see themselves. It's
important to show a whole lot
of people I may not know
very well see me."

And it has become impor-
tant, too, for reasons that
have nothing to do with her.
Price Waterhouse wants the
Supreme Court to rule that in
"mixed motive" cases it is up
to the employee to prove that
the employer's true reasons
for making a negative hiring
or promotion decision. The
Court of Appeals ruled that it
was reasonable for the
employee to show discrimination;
then, the court said, it was up to the
employer to show that it had
other legitimate reasons
on permissible grounds.

Many of Hopkins's suppor-
ters say it would be very dif-
cult for a woman who is the
object of discrimination to
prove exactly what was be-
In the 1940s and 1950s, just across the Virginia border from the North Side, where he now spends his days. But even after all this time, there is West Virginia in the round, musical sound of his words.

Coal country is in his thoughts these days, too. Now that he is, at 66, too sick to work, he often catches himself making a picture in his mind of the dirt farm where his parents raised him and where he brought his own wife when they were starting out. "It's a valley surrounded by a mountain with trees," he says. "To me, it's a very beautiful picture."

All of Charlie Broyles's associations with home are not kind, though: coal country is in Charlie Broyles's lungs too; black lung, they call it now, pneumoconiosis. His breath is shallow and he grows tired if he walks too quickly across the room. During his six years in the mines in the 1940's and 50's, just across the Virginia border from home, they called it miner's asthma, the wheezing and coughing that came from breathing the coal dust. The black air was so thick in the deep tunnels, Broyles remembers, that sometimes it felt as if he couldn't breathe at all.

The way Charlie Broyles sees things, it all ought to be simple: His doctors' reports show that he has black-lung disease in addition to a heart condition. There is a Government program that is supposed to compensate miners with black lung. He figures he's entitled to the benefits. "What I can't get through my head," he says, "is why the Government will have you tested to see if you have black lung, and then find you have it, and then they fight you."

The very first case to be heard this term by the Supreme Court will be Charlie Broyles's plea for black-lung benefits. Beginning tomorrow, 12 years and two weeks since Broyles first filed his claim, his case, and another with which it has been paired, will determine whether some 155,000 miners who say they have black lung will be able to reopen claims the Government has denied.

The coal and insurance industries have joined the Government in fighting the case. They say a victory by the miners will make it possible for undeserving claimants to win benefits, costing the two industries as much as $6 billion. Charlie Broyles, the opposition says, is sicker from his heart ailment than from black lung.

The case will test whether the law can be fair to people who have very little, says Gary H. Lester, the executive director of the Chicago Area Black Lung Association, an organization of 700 former miners, who, like Charlie Broyles, moved north to find jobs outside of the mines. "They feel they worked in the mines and they are disabled from working in the mines and they are entitled," says Lester, himself the son of a miner. "Unfortunately, in order to get justice, we have to fight every inch of the way."

The federal black-lung program began in 1969, awash in the good intentions of legislators. But since then, the program has become emblematic of tangled social programs that are buffeted by changing political winds.

Two separate Federal agencies, the Social Security Administration and the Labor Department, have, at different times, been responsible for the black-lung program, which is now paid for mostly by the coal industry. And although he has now lived with the case longer than he worked in the mines, he doesn't quite understand some of the other miners who decided not to fight: "Some say, 'The heck with it, I'm never going to get it no way, so why waste my time with it?' But I've been one of those fellas that believed you would win if you just hang in there long enough and do the right thing. I guess you could call that a streak of stubbornness."