

## Appellate MVP: Latham's Gregory Garre

By Y. Peter Kang

*Law360, Los Angeles (December 6, 2016, 1:46 PM EST)* -- Latham & Watkins LLP's Gregory Garre served as lead counsel for the University of Texas in its successful U.S. Supreme Court defense against a rejected student applicant's challenge to the school's affirmative action policy, earning him a spot on Law 360's 2016 list of appellate MVPs.

Garre, the global chair of Latham's Supreme Court and appellate practice and former U.S. solicitor general, attributes his recent success partly due to his penchant for preparation and an ability to think on his toes during oral arguments.

"The presentation of the oral argument is extremely important," Garre said. "I pride myself on my preparation for oral argument, focusing on the clear presentation of the issues and trying to anticipate the questions that the judges will ask, synthesizing ... answers and really breaking them down to the most persuasive pieces."

During intense oral arguments before the Supreme Court or elsewhere, Garre said oftentimes an attorney has only 30 seconds to get his or her point across before another question from the judges comes up, so quick thinking is paramount.

"Distilling your answer down to the simplest way to communicate is critical in the heat of combat in oral argument," he said.

This intense combat was clearly on display when Garre presented the University of Texas' case before a skeptical Supreme Court, which had already weighed in on the case once before.

Abigail Fisher's suit over UT's consideration of race in its admissions formula was in its second round before the high court justices, who examined whether the Fifth Circuit followed their initial edict to strictly scrutinize whether the school's affirmative action policies were "narrowly tailored" to achieve a diverse student body.

**MVP**  
**APPELLATE**



Gregory Garre  
Latham & Watkins

In June, the justices ruled 4-3 that the university's race-conscious admissions policy was indeed constitutional, a decision that shocked many court observers, who believed such an outcome to be improbable. Garre considers it the biggest "upset win" of his career.

"It's fair to say that we were a big underdog — to prevail against the views of most court watchers, that's a great win," Garre said. "The fact that the decision was a complete affirmation of the constitutionality of the admissions plan, coupled with the fact that it came as a big surprise to court observers, makes it quite unique."

Garre said one challenge the Latham appellate team faced was that several justices had already expressed skepticism about UT's race-based admissions policy.

"We had to persuade the justices who may have had prior views about race in that context and make them take a fresh view of Texas' admissions policy," he said. "We felt that the university established a record as to why the admissions policy was necessary but to effectively convey that to the Supreme Court was the challenge."

One approach that helped them get that message across, Garre said, was his team's multiple visits to the UT campus to interview school administrators, faculty and students, in order to learn firsthand how student body diversity is ideally achieved. That allowed Latham to present the school's educational goals to the high court more effectively, he said.

"One of the most important parts of formulating the arguments was just sitting down with folks on the ground and getting a sense of their objectives," he said. "That was an extremely important part of the case and helped in formulating our arguments and the manner they were presented to the Supreme Court."

Garre said that handling the long-running case, which began even before he joined Latham in 2009, taught him that no matter how dire people believe your position to be, you should continue to push forward with your best arguments since you never know what's going to happen.

"We kept trying to come up with ways to get the justices to look at the case from a fresh perspective, as the case ping-ponged back and forth from the Court of Appeals to the Supreme Court," he said. "We put our head down and kept going, making the most effective arguments that we could, and ultimately we prevailed."

--Additional reporting by Vin Gurrieri. Editing by Stephen Berg.