



Profile: Willie Smith

Pioneer in employment law – and UCLA football star – credits “perseverance” for his 40-year career

BY STEPHEN ELLISON

As a former college football star whose prospective National Football League career was cut short by an auto accident, William J. “Willie” Smith knows all too well that it’s best to prepare incessantly for what’s expected – and yet always be ready for the unexpected.

That approach has propelled Smith through a legal career that has spanned 40 years – on both sides of the aisle – with enough highlights and accolades to make an NFL star jealous.

“I generally now represent plaintiffs, though in the past I’ve represented defendants and tried cases on behalf of defendants and on behalf of the federal government,” Smith explained. “But I think my strength lies in being neutral. I know that no side has a monopoly on virtue.”

Experience is certainly on Smith’s side. The principal of Fresno-based Smith Johnson Inc. is a veteran of more than 50 trials, specializing in labor and employment, sexual harassment and discrimination law. He has also served as a judge pro-tem, mediator and arbitrator in employment disputes, as well as a hearing officer for the Los Angeles County Civil Services Commission.

Not bad for a guy who once ruled with extreme bias against opposing quarterbacks and running backs on the gridiron. Smith was a highly recruited defensive lineman who could have gone to any of several Division I colleges on a football scholarship. He chose UCLA for its prized football tradition, with dreams of making it in the NFL. Along the way, he became a protégé to Olympians Rafer Johnson and C.K. Yang of Taiwan, who had been training partners at UCLA and rivals in the 1960 Olympic decathlon. Everything in Smith’s life, at that point,



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Willie Smith reads a congratulatory card before the start of the State Center Community College District Board of Trustees Meeting, a board on which he has served for 31 years.

was pointing toward a career as a professional athlete.

Fortunately, his overall plan was not one-dimensional. “I was going to be a pro football player,” said Smith, who was the first in his family to attend college. “Being a lawyer was a backup plan.”

Unfortunately, that backup plan was put into action when Smith was injured in an auto accident in 1966, breaking his neck “and some other bones.” Doctors told him he’d never play football again.

Smith stubbornly persevered and proved that prognosis wrong, playing one more season at UCLA and signing with the Atlanta Falcons in 1969. He did not however, pass the physical exam, and was told that he couldn’t play for Atlanta or any other NFL team. “So that was it,” he said. That’s why I went back to law school.”

Homecoming

The idea of law as a career first dawned on Smith when he took a freshman orientation class in high school – perhaps before his full football potential had been realized – and joined a friend

in choosing electrical engineering as a pursuit. He soon discovered engineering required a multitude of advanced math and science courses and quickly had a change of heart. Law, he mused, would make a lot more sense.

“Quite frankly, I got into law because I saw people around me who were practicing law,” he said, “and I thought, ‘They’re not very much smarter than I am, and if they can become lawyers, I can become a lawyer.’”

Once his NFL aspirations were dashed, Smith returned to Westwood to pursue his law degree. Upon graduation, he worked for the National Labor Relations Board, where he prosecuted employers and unions on behalf of employees. He then worked at a private firm that represented unions before returning to Fresno, where his family owned a small farm.

Smith was fully prepared to continue his union work in his hometown, but there wasn’t much available work in that specialty, he said. So he began representing management and took the hearing officer position. Later, he added an elected post to his résumé, serving on the board for the State Center Community College District, a position he holds to this day but will relinquish at the end of his current term, he said.

In 1978, Smith started his own firm, not fully knowing what it entailed. “I was kind of naive about how much money it took to start a firm, and if I had known how much the investment was, I probably would have been deterred,” he said. “But out of ignorance, I started off on my own and found out I had to supplement my income by doing some farm work on the side. So I did; I did whatever it took, and I’m doing rather well now.”

Smith, indeed, kept up the firm and in the process built a nice, little side



venture in viticulture – two varietals on about 100 acres, he said – which he intends to continue managing after he's done practicing law.

A voice for minorities

As he reflected on the past four decades, Smith showed a hint of pride in being a tireless advocate for women and other minorities whose immediate bosses and employers had taken advantage of them. In the early years of his practice, sexual harassment cases covered about 80 percent to 90 percent of his workload. One longtime colleague, Mel Richtel, went so far as to call him a pioneer in sexual harassment and discrimination litigation.

"I remember one day back in the early '80s," Richtel recalled, "he came into my office and said, 'I think I have a great sexual harassment case.' And I said, 'What's that?' He was on that pretty early."

Years later, Richtel said, he and Smith would team up to reach the first million-dollar sexual harassment settlement in San Joaquin County.

In time, Smith delved into more employment discrimination work – involving pregnancies, race and age, especially concerning immigrant farm workers – which, of course, led to wrongful termination cases. His rural upbringing, multicultural background and physical presence form a rare combination but, in an odd way, make him a natural in the courtroom, Richtel said. "He's a big man, so his presence, in a way, might be intimidating," Richtel said. "And yet, he's kind of a gentle giant. He's just naturally the kind of person you gravitate to. I guess what I'm trying to say is he connects with everybody."

As is customary with many trial lawyers, when Smith is preparing a case, his focus turns immediately to the 12 people with the final say. "Two things," Smith said when asked about what's most important when going to trial. "One,

knowing your jury and how a jury thinks in your geographical area; and two, you have to think about how the jury is going to look at your particular client. If you have a client who is not very well spoken, who has less education than somebody else, then a jury is going to take that into consideration in terms of the award. The jury will give more money to someone who is more like them than someone who is less like them. That's just a fact of life."

In high-profile cases, Smith and his colleagues will hire jury consultants and conduct mock trials in an attempt to gauge what a jury is thinking. But even with those costly aids, he said, there are no guarantees to being able to read a jury spot on. "You never know what a jury is going to do," he said, citing as examples the trials of O.J. Simpson, the Los Angeles police officers who beat Rodney King and former D.C. Mayor Marion Barry. "You may think you know, but until that evidence is presented to the jury, you don't know what they're going to do."

"So you take your risks to some extent. You have to measure whether or not the other side is making it worth your while to take the risk, and you need to let your client know that there's a risk because you can't guarantee you're going to prevail, no matter what the situation is or what the evidence shows. I've lost some I should have won, and I've won some I should have lost."

There was one case in particular Smith lost at trial but won on appeal. In *Rivera v. NIBCO* (9th Cir. 2004) 364 F.3d 1057, Smith's firm represented 23 Latina and Southeast Asian women who had been fired due to their inability to speak English fluently, even though it had not prevented them from successfully performing their jobs for years. During jury selection, the defense kept striking all the Latino prospective jurors. "And (so) we filed a Batson Wheeler motion," Smith explained. "The judge ruled against us and made us go on with the trial."

The jury ruled for the defense, but Smith appealed to the 9th circuit and got it overturned, a ruling that ultimately was upheld by the U.S. Supreme Court. "The company had fired these women because they could not speak enough English, even though some had been there 20 years doing the same job," Smith said. "We took them on, saying (the company) had violated their national origin rights, and the jury didn't agree. Ultimately, the 9th Circuit and Supreme Court did."

Semi-final transition

By his own admission, retirement seems to be in the not too distant future: His wife is a retired judge, his grown children are successful professionals in their own right, and he has made it to the noteworthy milestone of 40 years in practice. "I'm thinking about semi-retiring, once I find out if my daughter is admitted to the bar," he explained. "I'll have to wait and see if she passes the bar her first time, and that may make a difference in my decision."

Professionally, Smith's four decades of work speak volumes about his staying power, and that, he said, is something aspiring lawyers should be mindful of. "It can be discouraging," Smith said, referring to an American Bar Association survey that said two-thirds of lawyers wished they had done something else with their lives.

"So I would just say, persevere," he continued. "It's frustrating sometimes because you don't always agree with the judges, and in addition, it seems like your days are very long. But there are rewards and there are satisfactions that come with practicing law. I have experienced them in the 40 years I've been practicing, and I think they (aspiring lawyers) will too."



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