



Profile: Ellen Lake

Employment rights specialist makes her mark in civil rights, public service law and the appellate bar

By **STEPHEN ELLISON**

While Ellen Lake certainly is pleased to have followed her father and grandfather in the law profession, she is even more proud to have carved her own path in an area of law far different from the pursuits of her forebears and one that has brought her success, reward and overall joy.

Almost her entire career, spanning more than 40 years, has been dedicated to public service law, from working as a staff attorney for the Legal Aid Society, the United Farm Workers and the ACLU to being chief counsel for the Agricultural Labor Relations Board and running her own private practice specializing in workers' rights. It's a far cry from the tedious business and corporate law she witnessed in her father's practice.

"I was a civil rights worker in the South during the '60s, and I spent two more summers in Alabama founding and working on a weekly civil rights newspaper," Lake recalled. "Those experiences got me to see law as a tool for social change.

"Nothing about the sort of law my father practiced was ever attractive to me," she added, "but I am proud to be the third generation of lawyers in our family, and I've produced a daughter who's going to be the fourth generation."

Lake's extensive civil rights work – including helping with voter registration in the Mississippi Freedom Summer of 1964 and starting the *Southern Courier* newspaper in Alabama soon thereafter – translated well to public service law. It certainly was her domain, as those who have worked with her would readily testify.

"I've long admired Ellen for her passionate commitment to justice and her keen intellect," said colleague Jean Hyams of Oakland-based Levy Vinick Burrell Hyams. "She's not much of a self-promoter, but those of us in the



Lake

employment rights' community recognize her contribution to our work as immense. She has handled the appeals in a large number of key employment cases."

Indeed, during the latter part of her career, Lake has done mostly appellate work, helping people with labor and employment disputes, oftentimes taking cases to the California's highest court and even the U.S. Supreme Court. It was a conscious choice of hers, when she became pregnant with her first child, to shift most of her practice to the appellate arena so that she would be able to continue a regular practice out of her home. "I was looking for a way to change my practice so that it would be less demanding with no more overhead," she said, "because I didn't want to be away from my kid 25 hours a day."

East Coast transplant

Lake's desire to be at home, close to her children, perhaps had much to do with her own upbringing. She was raised in a small, suburban town in New York state, an only child to her lawyer-father and a mother who worked out of the home as a freelance magazine writer. They were a close-knit family, sharing political beliefs and other world views, she said.

"The only thing that wasn't great," Lake recalled, "is that we lived in a kind of stifling town called Harrison, where being a smart, tall girl was a real disadvantage, especially in high school.

But in terms of the family setting, my parents couldn't have been more supportive."

When it came time to go to college, Lake left the small town behind and went to Harvard, where she worked on the editorial staff of the Harvard Crimson newspaper and graduated with honors. It was there she also met the man who would be her first husband, a pre-med student whom she followed to Cleveland and Case Western Reserve University. Lake attended the law school there and graduated at the top of her class.

The couple then packed up and moved to the Bay Area. While her husband entered a requested West Coast internship at Stanford, Lake was "very lucky" to land a clerkship with Associate Justice Raymond L. Sullivan of the California Supreme Court. About a year later, the marriage dissolved, and Lake was on her own in San Francisco.

From there, her career checked off a veritable laundry list of legal work in public service and labor organizations: the Legal Aid Society of Alameda County, where she represented indigent clients in civil and administrative cases; the United Farm Workers of California, where she represented the union in civil and criminal litigation; the ACLU of Northern California, where she was the director of women's rights; and the Agricultural Labor Relations Board, where she started as a staff attorney and eventually became chief of litigation.

"I had several great cases arising out of my period working for the farm workers union," Lake said. "It was a never-ending source of interesting litigation. I had cases in which the farm workers had a boycott against Gallo wines – a lot of agricultural employers brought a suit on behalf of liquor stores around the state to join the UFW's picketing in front of the stores, and that produced a very good



First Amendment decision by the California Supreme Court.”

Then, in 1981, Lake started her own practice, opening an office in San Francisco. It was tough at first, she said, because she didn't really know how to attract clients nor was she very good at screening clients and figuring out which ones to represent. “That's another advantage of appellate work,” she said. “By the time you get to the appeal, a lot has shaken out at the trial level, and if you're representing an appellant, you can look and see if there are issues to be raised.”

Through the courts

One ongoing case in which Lake is the lead appellate attorney is *Gentry v. Superior Court* (2007) 42 Cal.4th 443. It involves referrals of Fair Employment and Housing Act cases to arbitration and the validity of a class-action waiver, where an employee is required to waive his or her right to bring a class-action in arbitration. Lake won the case in the 4th District Court of Appeal, but she said it is threatened by recent decisions in the U.S. Supreme Court.

Another of Lake's cases out of the 4th District that went to the state Supreme Court helped define the continuing violation doctrine under FEHA. In *Richards v. CH2M Hill* (2001) 26 Cal.4th 798, she represented a disabled engineer who sued her employer claiming failure to accommodate. Lake said she and her client challenged whether evidence about incidents that occurred before the one-year statute of limitations for FEHA can be brought in and be made the basis of liability if they are linked to a series of

other events that occurred within the statute of limitations. “Another victory,” she said.

Lake believes the most difficult part of her job is overcoming a right-leaning U.S. Supreme Court. Attorneys can win things at the state level and think they are supported by an independent state ground, she said, and then suddenly an employer counselor argues that a decision handed down by the U.S. Supreme Court, only purported to interpret federal law, actually has an impact on that state claim.

“Unless Obama has another appointment to the U.S. Supreme Court to replace one of the conservative five, we're going to be fighting these battles for years – and they're hard to win,” she said. “The best arguments don't get a fair hearing from them.”

Winding down?

While the road ahead may look rough, Lake has no immediate plans to retire, though she knows when the time comes to close down her practice for good, she'll still need something to keep her busy. She's already involved in a number of professional organizations, including the California Employment Lawyers Association and the California Academy of Appellate Lawyers, for which she serves on the membership board. She also served the community as a member of the Oakland Citizens Police Review Board, which held hearings, subpoenaed evidence and witnesses, made recommendations about findings and proposed penalties, which the city manager either approved or disapproved, she said.

It is that type of community service that Lake sees herself pursuing after her law career. “I keep looking for different organizations and causes that I might get involved with,” she said. “I'm always drawn to stories about the hard lives of children in underdeveloped countries. For example, there was a story in the New York Times a while ago about a father in Afghanistan who sold his six-year-old daughter in order to pay off a debt – to get medical care for his family. I don't know what can be done, but it just made me want to jump on a plane and do something.”

For now, Lake said she will continue doing the type of work that gives her purpose, fulfillment and happiness, and hopefully helps the people she's representing to achieve their goals. It's that approach, she believes, all aspiring lawyers should consider. “The secret to being happy is practicing law – or whatever you do – in a way that you believe in what you're doing,” she said. “So many lawyers are hired guns and don't believe in what they're doing or are sucked in by the need to support an expensive lifestyle. I believe in every one of my clients, and that makes the work pure joy.”

“Find what you're passionate about in the law and pursue that despite whatever limitations or hardships it might create in terms of not being the richest lawyer on the block,” she continued. “Otherwise you'll be miserable and either quit lawyering or push ahead over the years and then look back at the end and say, ‘What the hell did I accomplish?’ ”

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