

Profile: Kathleen Lucas

Oklahoma school teacher turned employment lawyer says find good cases and prepare each one as if it's going to trial

By Stephen Ellison

Many standout lawyers today were inspired by the civil rights movements of the 1960's, and Kathleen Lucas, the principal of the Lucas Law Firm in San Francisco, counts herself among them. Since that historic era, her drive to correct societal biases has extended beyond the activist role, and she has become a veritable ambassador for equality, democracy and justice – particularly for working Americans.

That pursuit started for Lucas in the classroom as an educator. She helped integrate the teaching of American Indian history into civics courses in the Oklahoma school system and later was hired to do the same with African American history in the Washington, D.C. school system. The result of that work, she said, led to positions on the Senate Committee on Labor and Public Welfare and several of its subcommittees, particularly the ones dealing with education, and she began writing legislation. It would become the start of her transition into law.

"Every time I wrote legislation, I had to send it over to the Library of Congress and have them check it over for any conflicts," Lucas recalled, "and it was actually someone (from the White House) who told me, 'You really have some good ideas, but you need to write your legislation better – you should think about law school.' So that's how I ended up doing that. I was the first in my family to go to law school."

Lucas's career since has focused almost exclusively on employment law. She started in the Solicitor of Labor's Office helping establish the first enforcement actions against federal contractors for discrimination, after which she wrote the gender discrimination guide-lines governing all federal contractors and subcontractors – all the while taking graduate


Lucas

courses in labor and arbitration at Georgetown University law school.

Today, her expertise covers all aspects of employment law, including discrimination, sexual harassment and wrongful termination. For more than 35 years, Lucas has successfully represented employees against large employers such as Southern Pacific Transportation Co., Bank of America, Supercuts and DHL Express. And while a majority of her cases are settled, she is always prepared to step in front of a jury.

"I try about a case a year. A very small percentage of my cases end up in trial," she said. "There was a famous plaintiffs' lawyer named LeRoy Hersh who told me when I was younger, 'You don't litigate for a settlement, you litigate for a trial – and you must always keep your eye on the trial.' So that's how we practice at my firm. We are litigating to trial; we never lose that focus."

And that approach, she said, applies to every case, "because you never know which case is going to trial. Things that you think will most likely happen don't, and then things in which you have no idea what you'll do end up falling into place somehow. So I've stopped predicting."

Organization and preparation are the hallmarks of trying a case, Lucas said, but a good trial lawyer doesn't get too caught up in the strategies of the defense. And he or she always makes the client an integral part of that preparation. "I think it's very important to stand in your shoes and try not to get distracted by anticipating what the defendants might argue," Lucas said. "Certainly you consider it, but staying in your own shoes and knowing how you're going to prove your case and having your client understand what happens at trial – I think those are most important."

"I just watched the *Pao v. Kleiner Perkins* trial," she continued, referring to the recent high-profile gender discrimination lawsuit pitting the Silicon Valley venture capital firm against former junior partner, Ellen Pao. "It was a seamless trial. No one ever had to search for an exhibit; everything was just right there. But, as that case showed, you don't always win, and you've got to be ready for that, too."

Out on her own

Born and raised in Oklahoma City, Lucas attended Manhattanville College in New York for her undergraduate studies and then returned home to earn her master's in teaching from Oklahoma City University. Following her work with the Senate committee in the nation's capital and then the Solicitor of Labor's Bay Area office, she landed a job with Brobeck, Phleger & Harrison in San Francisco. After about six years of establishing herself in the employment law arena, she decided to start her own firm, initially sharing an office with another employment lawyer, Mark Rudy.

One of the early challenges of running a practice, Lucas found, was finding good cases. "There's an old saying about that: 'I'd rather be sailing than trying a bad case.' I always try to keep that in mind when looking at potential cases," she said.

Lucas has been a longtime member of national organizations such as the

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American Board of Trial Advocates and the National Employment Lawyers Association as well as the California Employment Lawyers Association and the San Francisco Trial Lawyers Association, all of which allow her plenty of opportunities to learn and contribute, she said. She also served as president of the McFetridge American Inn of Court in 2010. Just as important as all those large organizations, in her mind, is her work as a member of the San Francisco law library.

"The law library is the only place a citizen can go to read legal books," she explained. "And it's the only place where you can read all the decisions by the city attorney's office, which can be very important if you're looking at a regulation or a statute. So that's been very satisfying."

Proving privacy matters, even on the job

Lucas also gets a certain amount of satisfaction from inducing change for the better in public policy and private sector practices. While most of her cases aren't necessarily making headlines or garnering stratospheric monetary awards, a few have a fondness factor for their significant impact on the law going forward.

In one wrongful termination case against Southern Pacific Transportation (*Barbara Luck v. Southern Pacific*, San Francisco Superior Court), Lucas represented a woman who arrived at work one day and was told she must take a mandatory urinalysis for drug screening. Believing her privacy was being violated, the woman did not comply with the drug test and was immediately suspended. Later, she was fired. Lucas was able to convince a jury that because her client did not perform safety-sensitive duties for Southern Pacific Transportation, the company could not force her to take a drug test and was wrong to terminate her. The result was nearly a half-million dollars in damages.

"It was a perfect example of a case that I thought would settle," Lucas recalled. "They had to make a lot of difficult decisions about whether (privacy rights applied)."

Lucas's client was a computer programmer and not one of the company's train operators, which understandably were the main targets of the new random drug-testing policy because "no one wants an intoxicated driver on a train," Lucas conceded. "We decided to narrow it, and got it upheld (on appeal). That's a case I'm very proud of."

In cases against Supercuts and DHL Express, Lucas successfully argued that the companies' arbitration clauses – essentially agreements that all claims between employer and employee be decided by an arbitrator – were unconscionable and therefore unenforceable. In each case, Lucas contended, the agreement gave the company a distinct advantage over the employee by playing to an arbitrator's routinely collegial relationship with employers as well as employers' virtually limitless resources in covering the costs associated with arbitration processes.

With those two victories, Lucas helped establish new, fairer standards in arbitration agreements. "I don't think plaintiffs get a fair shake in arbitration," Lucas said. "There were other cases, but they didn't set policy like those did."

On the occasions when her cases make it to trial, Lucas believes her down-to-earth personality shines through and she is able to put people at ease, no matter what the subject. "I would say my strengths would be my relationships, my ability to communicate with the court and jurors," she said. "And good relationships inside the courtroom – it's something that comes naturally to me."

Still, there is room for improvement, she said. Even after more than four decades in the profession, Lucas has yet to perfect what she feels is a critical part of a trial for any attorney. "The hardest challenge for me is to prepare what I like to call a 'zinging' cross examination – to get the question exactly right that elicits the answer you want," she explained. "I spend a lot of time trying to get those cross questions right, and I'm not always successful. And jurors are excited for cross examination – they look forward to it."

For love of the work

When she's not in the office or in court, Lucas stays active on the golf course, the tennis courts and in the swimming pool. She was a competitive swimmer through her high school years and once captured a state tennis title. She also loves to travel, making her most recent treks to Colombia, Cuba and Argentina.

And while she has been practicing for the better part of four decades, Lucas said she's not about to hang up her briefcase. "I've thought about it, of course, but no, I'm not ready to retire," she said. "What I might do somewhere along the line is bring in someone, say a mid-level attorney, and do some succession planning. But I'm not planning on retiring just yet. I love what I do."

On the suggestion of offering advice to young lawyers today, Lucas felt compelled to pass on musings from her dad about choosing a path of gratification. "The most important thing is to like the area you practice in," Lucas said. "This is something my father told me; he said, 'You have one task in life: to find something that you like so much that it doesn't feel like work.' I think a lot of people end up in a field they don't like, and then they think they don't like being a lawyer. But there are many ways you can practice law – you can be in academics, you can be in nonprofits, you can be an in-house (counsel), you can be in a small firm or a large firm.

"I think the contribution of lawyers in our society is extremely important," she continued, "and I find, frankly, lawyers to be among the most interesting people I know because so many lawyers have bigger interests than what they do every day. But there are so many ways to practice law, and it's important for young lawyers to recognize that."

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