



Profile: David A. Lowe

Seasoned employment law specialist says it never stops being interesting and enjoyable work

By **STEPHEN ELLISON**

There's no institution too big nor client too small for David A. Lowe to ensure employers remain fair and just to their workers. From the C-level tech executive who experiences gender discrimination to the assembly-line worker who has little leverage to fight for overtime pay, Lowe stands up for those individuals to get them to a better place.

The managing partner with San Francisco-based Rudy Exelrod Zieff & Lowe has spent virtually his entire 26-year career in the employment-law arena and has taken some of the world's largest and most influential private and public companies to trial for issues such as discrimination, retaliation, harassment, wrongful termination, unpaid wages and equal pay.

While it wasn't Lowe's intention out of law school to enter into plaintiffs' employment law, the Rudy Exelrod firm hired him soon after graduation and it turned out to be a great fit; it was a way to help people, it was intellectually interesting, and the early experience made him realize it was what he wanted to do.

Lowe enjoys practicing plaintiffs' employment law for three reasons, he said. First, is the opportunity to have a positive impact on someone's life. When clients come to him, he said, they're usually in a very difficult, traumatic situation, whether it's a low-wage worker who's experiencing harassment or a senior executive at the pinnacle of her career who is watching what she's worked to achieve for 30 years taken away from her because she's a woman in a male-dominated profession.

"So, our clients at all levels come to us needing help, and to have the opportunity to support them through a difficult situation and hopefully use the legal



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system and our expertise to get them to a better place is just incredibly rewarding," Lowe explained. "I can't even find the words really to express how fortunate I feel to be able to

come to the office every day and do that. So, that's really the main thing that keeps me going."

Secondly, Lowe loves the academic aspect of employment law. It's intellectually interesting and challenging, he said. Laws continue to change and evolve and grow in ways that resonate with current events, whether it's the Me Too movement or the "racial reckoning" after George Floyd was murdered at the hands of police officers or the ever-shifting notion of intellectual property in Silicon Valley.

"If it is resonating in society or it is captured in the headlines, there's an employment law aspect to it," he said. "We're very lucky to have the opportunity to get involved in some of the most interesting and high-profile cases, many of which are written literally from the headlines. We're representing people who are at the center of extremely interesting situations, whether it's in a board room or on an assembly line or at a tech company."

The third reason Lowe loves practicing employment law is the people he gets to work alongside as well as against. The employment bar is a very sophisticated, collegial group on both sides of the aisle,

he said. All of them care deeply about the issues, regardless of whether one side finds the issues in question more interesting than the other.

"It's been my experience, practicing in the Bay Area, the level of practice is very high, like most of the people that we work with, co-counsel and colleagues on the plaintiff side, as well as our opponents," Lowe said. "I think it is partly cultivated by the bar and the institutions that have really worked hard to foster that collegiality and civility. ... There's not a lot of gratuitous nastiness that I encounter in our practice. It happens from time to time. But it's the exception rather than the rule for the most part.

"We're all advocates for our clients, but we are respectful of each other and cooperative," he added. "Because we recognize that that's really going to be in our clients' best interest as well, to be cooperative and fight for things we have to fight for but not pick fights that are unnecessary and detract from having a constructive relationship."

Inherited passions

Born and raised in the suburbs of Cleveland, Lowe got early lessons in helping people from his mother, who was a social worker, and in the power of the legal system from his father, who was a lawyer. He earned a bachelor's degree in English and philosophy from Emory University in Atlanta then headed west to University of California, Berkeley for law school.

The move to the Bay Area was a bit by design, Lowe said. He had visited the region while he was still attending undergrad classes at Emory and was immediately taken by the culture and the climate.

"I just knew that this is where I wanted to live," he said. "I really loved



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the Bay Area from the moment I set foot here. So, I did Berkeley in part because this was the area that I wanted to be, and mostly, I really had respect for Berkeley as an institution. It was a perfect situation from my perspective.”

Not long after graduating from law school, Rudy Exelrod & Zieff hired Lowe as a contract lawyer, which he did for about eight months before the firm hired him on as a full-time associate. He worked his way up to partner after about 10 years, then to managing partner seven years after that.

Over that span, Lowe has achieved numerous seven-, eight- and nine-figure verdicts and settlements on behalf of his clients, many of whom work in high tech, high finance, entertainment, health care or private equity. He’s won several awards for his work, including Attorney of the Year in employment law from California Lawyer magazine in 2008, and is regarded as one of the top plaintiffs’ employment law attorneys in the region.

Even with all the accolades, Lowe recalled a class action case he lost against Starbucks early in his career as one of his most memorable. He was called down to San Diego to take a senior co-counsel role for a “complex” and “challenging” case involving tip skimming on behalf of 130,000 baristas in California. For Lowe, it was an exciting prospect to be taking such a massive case to trial with the hope of helping so many people at once.

Learning from losing

“It was a very important case, and it was not an issue that had been litigated a lot. So, we were not exactly making new law, but we were hoping to develop the law,” he recalled. “Procedurally, to try a case, to actually take a case like that to trial and figure out how do we handle and try a case on behalf of that many people and how do we handle the expert issues and the damages issues – it was one of the most intellectually challenging and fun things I’ve ever done.”

Lowe and his colleagues won the liability phase and were expecting to

REDIRECT:

Getaway Spot: Tahoe

Go-To Music or Artist: Queen

Recommended Reading: “The Moor’s Last Sigh,” Salman Rushdie

Dream Job: The one I’ve got

Words to Live By: “It is not the critic who counts; not the one who points out how the strong person stumbles, or where the doer of deeds could have done them better. The credit belongs to the one who is actually in the arena ...” — Teddy Roosevelt

have about six months to prepare for the damages phase, but the judge was about to retire and did not want to wait six months. She set a date within two weeks. Ultimately, the judge awarded with interest more than \$100 million to the class, a huge victory for the low-wage baristas, Lowe said. Then, of course, Starbucks appealed.

Several months later, he argued the appeal against “very good appellate counsel” on the other side, he said. Starbucks prevailed, and the Supreme Court declined to review the case.

“So that was the end of that. We had worked for thousands of hours and had this incredibly challenging and difficult but exciting trial and won, then lost on appeal,” Lowe said. “The reason I mention it is because it packed so much into one case, the idea that we were helping a lot of people and the feeling of just kind of leaving it all on the field, which I think as a trial lawyer is a very powerful experience, to feel like you’ve just gone all out in a case. I mean, I was probably sleeping three or four hours a night for months and just doing everything (I) could and then having a big success followed by an incredibly painful loss.

“Why would I use that as my first example of a memorable case? Because I learned so much,” Lowe continued, after lamenting the million-dollar-expense hit the firm endured. “I learned that you have to take those risks as a trial

lawyer; you can’t be afraid to lose. You can’t be afraid to leave it all on the field and put everything you have in the case to get the best possible result for your clients. And you just have to keep doing that over and over again. ... The fact that you’re maybe going to lose even a big case should not deter you from doing it all over again.”

High-level courage

More recently, Lowe had huge success in a case against social media giant Pinterest on behalf of its former chief operating officer, who came forward with allegations of gender discrimination and was subsequently fired. Francoise Brougier had helped take Square public and had been a highly regarded executive at a number of companies before she arrived as the second-in-charge at Pinterest. Lowe admired her courage for speaking up and taking action when she was mistreated.

“We’ve been fortunate to represent some really extraordinary people at the top of their fields. Francoise certainly fits that category,” he said. “Some people would have just moved on, too concerned about their professional reputation to make waves. ... She made the decision, not for her own benefit but to help draw attention to these issues and to help others to use their influential voice to tell their story. It was such a privilege to be able to be with her on that journey, to have such an impactful outcome.”

The \$22.5 million settlement is one of the largest public settlements in a gender discrimination suit. As part of the deal, Pinterest and Brougier agreed \$2.5 million of the settlement funds would go directly to nonprofit organizations that support women and people of color in the tech industry.

When Lowe is not working, he spends much of his free time with his three children, ages 5, 7 and 13. Before the kids and pre-pandemic, he and his husband enjoyed traveling, taking treks to the Sierras to hike, snowboard or just spend time on the lake.



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“That’s pretty much my life outside of work right now, going on adventures with the kids,” he said. “Now that things are improving a little bit with the public health situation, we’re really looking forward to taking them and doing some of the things we used to do.”

Lowe’s advice to young lawyers today would be simply to do something that keeps their interest and that they care about.

“Because whatever you pick to do, it’s something you’re going to be doing for a long time,” he said. “It’s been

incredibly rewarding to have had the opportunity to do something really interesting. ... I mean, I can’t think of a day that I haven’t wanted to come to work or where I wanted to do something else.”

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