

Zubulake Delivers Suspense, Inspiration

Jeff Whited

It seems appropriate that Laura A. Zubulake self-published her book *Zubulake's e-Discovery: The Untold Story of My Quest for Justice*. Everything in the story suggests a woman of strong will, independence, and a determination to do things her way.

In her 2002 gender discrimination suit, *Zubulake v. UBS Warburg*, she played the roles of plaintiff, attorney, detective, accountant, records manager, project manager, and chief negotiator. It's only logical she would also play the role of publisher.

Zubulake's first-person account defies a *single* description. It's a legal yarn that remains suspenseful even though most readers know the outcome: Zubulake won, receiving more than \$29 million in compensatory and punitive damages plus reimbursement of her costs.

It's also an inspirational story of how perseverance, self-reliance, and the desire for justice can prevail against the steepest odds. It's a call to action for corporate counsel and executives to whip their information governance into shape. And, on its purest level, it's a tale of David v. Goliath.

Zubulake is, of course, David – albeit a non-traditional David, who earned \$650,000 per year as a financial analyst. Goliath is UBS Warburg, the international banking giant that fired her in 2001 for “incompetence.”

She contends she was fired because her new manager discriminated against women.

The case is remarkable because of U.S. District Court Judge Shira A. Scheindlin's pretrial opinions that defined the e-discovery legal landscape, spawned an e-discovery industry, and triggered revisions to the Federal Rules of Civil Procedure.

But the landmark legal rulings are

yesterday's news. What makes the book satisfying is Zubulake's account of the roles she played so creatively while battling a corporate behemoth.

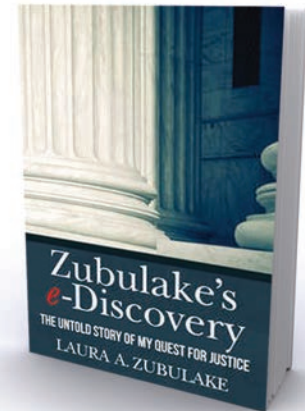
Most often she plays the part of a lawyer. But she writes like a lay person: “The law was deceiving; less complicated than I initially thought; it was more founded in common sense.”

This early epiphany inspires her to manage and develop the legal strategy. Treating her legal team as consultants rather than principals, she analyzes pretrial motions, writes outlines for depositions, scrutinizes e-mails and depositions, and attends every courtroom session.

Much of her time in this arduous four-year process is spent alone, sleuthing. She knows the truth is on her side, and the e-mails from her last few months on the job confirm it. One message from her manager's manager, for instance, is quite revealing: “As I see it, you do not appear to be upholding your end of the bargain to work with her.” Even more incriminating is a message from the manager himself, who writes that Zubulake's “ability to do a good job . . . is clear.”

For Zubulake, the truth is revealed in the e-mails; as evidence, they're more powerful than scripted testimony. She writes: “I would take the testimony of an e-mail over the sworn statement of a person with ill intent any day.”

Zubulake manually types every relevant e-mail, placing them into a spreadsheet. In doing so, she finds patterns and gaps that further convince her the defendant is concealing more evidence. Consequently, she spends the next four years outthrusting and outwitting UBS Warburg's attorneys in her quest for the production of lost e-mails on back-up tapes.



Zubulake's e-Discovery: The Untold Story of My Quest for Justice

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As dramatic as her story is, Zubulake treats the trial itself as fairly anticlimactic and devotes few pages to it. She suggests that no one in the legal world expects the kinds of surprises that upend trials in television courtroom dramas.

In the book's final pages, the author reflects on the importance of the Zubulake rulings and her courtroom victory. She says her verdict was a wake-up call to corporations and that it redefined discovery: “No longer does discovery begin with document requests, conferences, or the filing of a complaint. It begins with an organization's information management policies and procedures.” **END**

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