

LET JUDGMENT Run Down as Waters, and RIGHTEOUSNESS as a Mighty Stream

Who believes that stuff?
Amos ... and Arthur Bryant

by DEANNE STONE

photography by DWAYNE NEWTON

Arthur Bryant was on the path to becoming a partner in a major law firm. After graduating from Harvard Law School, he clerked for U.S. District Judge Gabrielle McDonald and then worked as an associate at the Philadelphia firm of Kohn, Savett, Marion & Graf (now Kohn, Swift & Graf).

Four years later, he chucked it all to become the sole staff attorney in a public-interest organization, Trial Lawyers for Public Justice.

Bryant recalls his conversation with the firm's lead partner after he announced he was leaving. "How much more can we pay you to stay?" the partner asked. "You don't understand," I said. "I'm taking a 60 percent pay cut to take this job." "OK," said the partner. "How much less can we pay you?"

"He got it," says Bryant, laughing. "He knew where my heart was."

Last year Trial Lawyers for Public Justice, now called Public Justice, celebrated its 25th anniversary and Bryant, its executive director for the past 20 years, has never looked back. And why should he? Today, Public Justice is a legal powerhouse, and he had a big hand in creating it. With a staff of 10 lawyers working out of offices in Oakland and Washington, D.C., Public Justice has racked up an impressive record of precedent-setting litigation on behalf of the public good. Along with its Access to Justice campaign, it battles for consumer rights, workers' civil rights, class action preservation and environmental protection, and fights federal pre-emption.

Bryant, a buoyant personality with an easy laugh, says he didn't realize his organization was unique until a lawyer researching the public interest law field told

him so. "You think you've been building a trial lawyers' public interest law firm," she said, "but what you've built is America's public interest law firm." The truth of what she said stunned Bryant and led his board to change the organization's name to Public Justice. "She was right," he said. "We had long ago surpassed our original vision to do trial lawyer litigation. In fact, we've been doing a broader range of high-impact, cutting-edge litigation than any law firm in the country."

Trial Lawyers for Public Justice was inspired by a challenge Ralph Nader made to a convention of plaintiff lawyers in 1980. It's fine, Nader told them, to take cases in their private practices that compensate the injured and hold wrongdoers accountable. But that was only half of what they should be doing. What was needed was a public interest law firm that took cases to promote the public good, whether or not they made money.

Many corporate law firms do pro bono work; but while they are willing to sue government agencies, they didn't sue corporate defendants. The hands of most public interest law firms are tied too. "They didn't have enough lawyers," says Bryant. "Trying these cases would have eaten up everyone on the staff."

Two hundred trial lawyers answered Nader's call. Putting up \$1,000 each, they formed Trial Lawyers for Public Justice and recruited plaintiff lawyers on whom they could call to sue government agencies and corporate defendants. With that \$200,000 seed money, they assumed they could fund the organization from attorney's fees. "That is," says Bryant, "until someone asked how that would happen if we took only cases no one else wanted."

Today, Public Justice is a project of the Public Justice



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Foundation, a charitable membership organization that's supported by 3,000 dues-paying members, donations and, adds Bryant with a chuckle, even the occasional fees its attorneys win. That's no joke. Public Justice takes on high-risk, hot-potato cases that few public interest lawyers have the resources to tackle. "The controlling criterion for accepting a case," says Bryant, "is that our involvement will advance the public interest. Then we have to consider whether we have a fair chance of success and can manage the costs."

One case involved Francisco Castaneda, a 35-year-old Salvadoran immigrant arrested in Los Angeles for possessing

methamphetamines. When the police discovered Castaneda was in the country illegally, they turned him over to ICE (Immigration and Customs Enforcement). Castaneda was transferred from a county jail to a federal detention center in San Diego. For 10 months he begged to receive medical treatment for bleeding lesions on his penis. Although a series of ICE doctors suspected that Castaneda had cancer and submitted requests to perform a biopsy, the authorities ignored them. Then, the day before the biopsy was scheduled to take place, Castaneda was abruptly released from detention. He went immediately to an emergency

room where he was diagnosed with invasive squamous cell carcinoma, resulting in amputation of his penis.

"They released him from custody so the federal government wouldn't have to pay for his biopsy or follow-up treatment," says Bryant. "It's outrageous that this can happen in our country. This was not a man captured in the war against al-Qaida. This was an illegal immigrant whose mother brought him here when he was a kid."

Public Justice took on Castaneda's case, and sued the U.S. government, the state of California and several federal officials for failing to provide reasonable and humane medical care to Castaneda—neglect, it charged, that was tantamount to torture. This past October, Public Justice arranged for Castaneda to tell his horror story in front of a House Immigration subcommittee hearing. ICE had stopped its action to deport Castaneda; unfortunately, he died this past February from cancer. His case, though, has been given new life by a federal judge in Los Angeles who ruled that the Castaneda family can sue the federal government for damages.

Not nearly as dramatic but still pernicious in intent is the effort of a growing number of cell phone companies, banks and credit card companies to deny consumers the right to sue or join in class action suits against them. Public Justice is the national leader in the battle against corporate efforts to use arbitration to eliminate court access. "The goal of these companies is simply to avoid having to pay anything to anyone," says Bryant.

Several years ago, in the case of *Ting v. AT&T*, Public Justice won one of the biggest victories in the country against mandatory arbitration. "We proved that AT&T had consulted with a marketing company to design a mailer to look like junk mail," says Bryant. "If its long-distance customers didn't open it or read the fine print at the bottom, they wouldn't know that they had given up their rights to a court trial." Since then, Public Justice has gone on to win other leading consumer class action cases as well as suits against employers trying to deny employees their day in court. "It used to be that everyone agreed on the basic right of access to the courts," says Bryant. "Now we have to fight for it."

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Caricatures depicting Bryant's crusader image decorate the walls of his Oakland office. One shows Bryant dressed in a baseball outfit with "JUSTICE" written across the front of his jersey, swinging a giant gavel. Another has Bryant down on his knees praying in front of a courthouse and saying, "Don't pre-empt me." Public Justice has been relentlessly pursuing pre-emption cases against the government for the past 25 years.

"Federal pre-emption is the legal term for saying federal law wipes out your rights to hold companies accountable," explains Bryant. "That's serious because most laws in which injured people sue to get compensated are state laws." Supported by the Bush administration, one regulated company after another has claimed that it couldn't be sued because it was regulated by the federal government. Two years ago, the Bush administration used the same argument trying to protect pesticide manufacturers from plaintiffs seeking damages for injuries caused by pesticides. Public Justice opposed the argument by filing an amicus brief before the Supreme Court. "The justices agreed with our position that, of course, pesticide manufacturers could be sued," says Bryant. "Now we're arguing in front of the Supreme Court cases of drug companies, medical device manufacturers and tobacco companies that make the same claims. These cases are

important because consumers won't have a chance at justice if the courthouse doors are closed."

Bryant got interested in politics at age 9 after President Kennedy was assassinated. By age 13, he was leafleting for Eugene McCarthy and Bobby Kennedy's presidential bids and protesting the Vietnam War. He had decided to go into politics but, after watching the demonstrations at the 1968 Democratic convention on TV, he identified with the protesters, not the politicians. "Once I understood that politicians had to compromise all the time, I lost interest," he says. "From then on I wanted to be a public interest lawyer so I could fight to the end for what I believed was right and never have to cut a deal."

Bryant smiles at his youthful naiveté but today, at age 53, he is as determined and relentless as ever. That he is still carrying on the fight at all is in itself a miracle. In August 2002, a car crash almost ended his life.

It happened on a rural section of Highway 97 in central Oregon. After giving the keynote speech at the Oregon Trial Lawyers Association, Bryant, his wife, Nancy Johnson, and their son Wally, were driving back to Oakland when their car was hit head-on by a high-rise pickup truck going 60 miles an hour in the wrong direction. The pickup's driver, who was not wearing a seat belt, walked away mostly unharmed. The Bryant family, who had their belts buckled, did not. Johnson was seriously injured and Wally broke his leg; Bryant bore the brunt of the crash. He suffered a severe head injury, two collapsed lungs, broken bones in his arms and legs and a crushed right hand and foot. Bryant had to be cut from the wreckage. Luckily—if anything can be called lucky about such a crash—it happened near a major trauma center.

For six weeks, Bryant was not quite comatose but not present either. When he finally came to, he was in disbelief. He thought he had been napping.

Since the accident, Bryant has had dozens of surgeries and years of physical therapy. The nerves controlling the movement of his left eye were permanently damaged, leaving him with double vision. For several years he wore a patch over his eye, but now he only wears it occasionally. "The eye patch bothered my wife," he says, "so one day I removed it and discovered that I could function without it." Removing the patch not only made a difference to Bryant and his wife, but also to his board and staff. "They had always treated me as if I were fine, but when I came to work without the patch, it was as if they were saying, 'Now he's back.'"

Bryant's bones have healed and his brain is as sharp as ever. The only visible remnant of the accident is Bryant's left eye, which doesn't move in concert with the right, and even that is barely noticeable behind his glasses. But the accident took a heavy emotional toll on him and his family. Before the accident, Bryant used to dance and play tennis, and is just starting to do both again. For now what he enjoys most are quiet times with his wife and son, reading or going to movies.

Bryant's near-death experience also gave him a deeper understanding of just how tenuous life is. "For a long time we were hanging on for dear life," says Bryant. "It was a long haul, but we made it. Now just getting back to normalcy feels good."

During his long recuperation, Bryant had plenty of time to think about what mattered most to him. His family, of course, and his work. "I never had a moment's regret about my life's work," he says. "I still love what I do." ▀