



Adele Kimmel

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[PLEASE NOTE:

Adele Kimmel: I am Adele Kimmel and I am the director of the Students' Civil Rights Project at Public Justice.

[Neville Johnson: What does that mean?]

Adele: It means that I'm the head of a special project that uses litigation and advocacy to combat harassment and other forms of discrimination so students can learn and thrive in school.

Neville: Let's start off with how you became involved with Public Justice. What led you there?

Adele: About a year before I came to Public Justice in 1993, a very close college friend of mine died of breast cancer and it led me to question many things -- one of which was: "What do I want to do with my legal career?"

I had always known when I was in law school that I wanted to do public interest law, and because I had student loans to pay off, I ended up working for a small law firm that did civil litigation. And when my good friend died, it made me think, "I need to go back and

do what I intended to do when I was in law school. Why did I become a lawyer? Because I wanted to do public service."

And a good friend of mine told me about Public Justice. When I read the job announcement and saw that one of the requirements was that you had to have a healthy sense of outrage, I thought, "Well, I've got that in abundance."

When I came to interview at Public Justice, I was told that I would have the freedom to build out a civil rights practice at Public Justice, which is what I had wanted to do. There wasn't much civil rights work being done at Public Justice at the time and I was given the flexibility to build the practice the way I would like to see it. So that was very appealing to me and it was going to enable me to do what I always wanted to do, which was to make a difference in the world and to bring more justice to the world. That's how I came to Public Justice.

[Neville: Did you have to relocate?]

Adele: No, I was in Washington DC already and so I stayed in Washington DC. What I did have to do though was take a big pay cut.

[Neville: Where did you go to college and law school?]

Adele: I went to the University of Virginia, undergrad and law school.

[Neville: When you got to Public Justice, what was it like?]

Adele: When I came to Public Justice in 1994, it was very different than it is today. It was quite small. I was one of two staff attorneys -- we now have over 20 attorneys. The attorney meetings were the executive director and myself and Leslie Bruckner and that was it. It was quite small, and just the way we did things was quite different.

For example, back then, we would take any case that passed the "damn outrage" test. It wasn't especially strategic. We were really focused on impact litigation, but it was any case that passed the "damn outrage" test. Now, we are much more strategic and litigation, while it's still our primary tool, is one of many tools that we use to make change. So I feel like we have a much greater impact now than we did when I started 27 years ago.

[Neville: What are these other tools you referenced?]

Adele: One thing that we do very effectively was to use the media to get attention to our cases. We use the media much more and then on top of that, we use community organizing so that the people that we're representing, and in my area, it's most often students, can use their voices and become advocates for change themselves. They really become empowered to help make sure that the change we make lasts.

[Neville: Does that mean you do outreach and go to the communities?]

Adele: We do outreach, we do education, we do advocacy, with media, with other groups and then also sometimes legislatively, which is something we didn't do when I first started at Public Justice. It's just we have a lot more tools in our toolkit to make systemic change and make sure the change lasts.

[Neville: Do you have a team that you work with?]

Adele: Oh, yes. Depending on what you mean by “team,” I feel like all my colleagues are extremely supportive and I also work with attorneys, usually plaintiff-side attorneys, in the cases so that's part of the team. And then in-house for the Students' Civil Rights Project, I have two attorneys working with me, a law fellow and a permanent staff attorney.

[Neville: What is the Students' Civil Project?]

Adele: The Students' Civil Rights Project is something that I spearheaded starting about seven years ago, it was under another name, then it was the Anti-bullying Campaign, and then combined it with [our gender and sexual violence program](#). The idea behind it is to make sure that all students can learn and thrive in school and that they have equal access to education. In particular, we've been focusing on barriers based on race and gender.

[Neville: You're talking about grammar schools, middle schools, high schools?]

Adele: All of the above. We started out focusing on K-12 public schools, but we also sue institutions of higher education. We sue universities and colleges and public schools, sometimes private schools as well, that are depriving students of equal access to education based on discrimination or harassment.

[Neville: Give us an idea of some of the cases that have worked out?]

Adele: A lot of the cases that we do involve students who have experienced sexual harassment, often sexual violence, at school. They are sexually assaulted and either the school could have prevented the sexual assault because they knew that the person who had harassed our client was a serial predator, or they didn't respond appropriately when they learned about the sexual assault and deprived the student of educational opportunities by essentially forcing them to continue to be in a hostile educational environment with their harasser.

We've had a lot of success in this area. We've represented many students who have experienced sexual violence by another student or by an employee of the school.

One way that we have made significant change is not only changing the law to make it easier for students to get justice in this area but also by changing the culture of the

school or the school district that we have sued. So things like changes to their harassment and discrimination policies and the procedures that they use when they're addressing harassment at school; changes to the way they train and educate the employees and administrators who have to address a report of sexual harassment; changes to training for students and education for students so they understand when something is sexual harassment and what they should and should not be doing and who they report to when something happens; making sure that schools track when somebody reports that they have been sexually harassed.

By doing these kinds of systemic reforms, making systemic reforms within the schools, it makes it a safer, more welcoming place for students.

I will add, Neville, that one other thing that we do for the students that we represent is, in addition to getting systemic change to the culture of the school, we get justice for the individual. So we're also getting them monetary damages on top of the reforms that they are seeking --because most of the clients we represent say that the reason that they are filing a lawsuit is they don't want any other student to experience what they experienced.

I'm not just talking about the harassment itself, but also the school's response to the harassment, the betrayal by the people in a position of authority who are supposed to protect the students and don't. These students are very motivated to make change within their schools so that no other student has to experience what they did.

[Neville: Do you usually settle after the litigation or how often do you have to go through an actual trial?]

Adele: Most of our cases settle -- like most cases generally. In the Title IX arena -- which [Title IX prohibits sex discrimination in education](#) programs and activities that receive federal financial assistance so it prohibits sex discrimination in all public schools and pretty much every private college and university and public colleges and universities.

Title IX litigation I have been doing since I started Public Justice focusing on harassment, in particular, for the last seven years or so. And in that time, we have only gone to trial once. Even though we lost the one case we tried, we got it reversed on appeal because the judge gave bad instructions and ordered a new trial.

[Neville: Do you feel that you're making progress or is it just as bad as when you started?]

Adele: Oh, I feel that we're definitely making progress. Sexual harassment at schools and the problem of sexual assault at schools just wasn't really on the radar of a lot of people until about 20 years ago. Then it finally, because of a lot of student activism, got on the radar of federal government officials and the federal government started to issue

more guidance about sexual violence at schools and what schools' obligations were to address it.

That's part of what led me to switch the Title IX work I was doing. Earlier, I had been focusing on [Title IX in the athletics arena](#) and I had been representing women intercollegiate athletes whose teams had been eliminated from their universities, as well as coaches who had been retaliated against for complaining about gender inequities in their athletics program.

Then, as I saw almost every day, I would read some story about a student who had been sexually assaulted either on or off campus and was subject to a hostile environment at school and the schools weren't doing anything to address it. It was hard to even watch a news program without seeing a story about this. I thought, "I think this is something Public Justice can do something about."

I took a look at the law and it wasn't very well developed. The liability standards weren't very well developed. Some courts were interpreting liability quite narrowly and I thought that there was a lot Public Justice could do to make sure that courts were interpreting Title IX as broadly as it was intended to be interpreted and making sure that students could continue their education without having to contend with a hostile educational environment based on their sex.

[Neville: Are you mostly in State court or Federal court?]

Adele: Mostly Federal court. The claims that we bring are federal civil rights claims. We also have been doing work under [Title VI, which is a sister statute that prohibits discrimination](#) based on race, national origin, and color at schools that receive federal funds. One of the early cases that I brought was a case called [Cureton v. National Collegiate Athletic Association](#). This was in the late 1990s and we sued the NCAA on behalf of Black student athletes who had been denied the opportunity to get athletic scholarships because they did not meet the NCAA's "freshmen eligibility requirements." They had to get a minimum score on standardized test to be eligible to receive an athletic scholarship.

For many Black student athletes, the athletic scholarship was really a pathway to getting an education at a college or university. Even students with fantastic grades, like straight A students, if they didn't get that minimum test score on an ACT or an SAT, they couldn't get a scholarship to college or university. We had sued the NCAA under Title VI because, at the time, it had a youth sports program that received federal money, which made the NCAA subject to these kinds of lawsuits. This is one of my more memorable cases early on, we had won on behalf of the student plaintiffs we represented. We had won on summary judgment – which is very rare for plaintiffs.

Plaintiffs rarely move for summary judgment, in comparison to defendants, and we won on summary judgment. Unfortunately, the Court of Appeals reversed on technical jurisdictional grounds. But because we had another tool in our toolkit -- we had done so

much publicity on how unjust and discriminatory the NCAA's initial eligibility rule was -- [they got rid of it anyway](#), even though they weren't forced to. Ultimately, by our lawsuit, they were forced to because of all the bad publicity the lawsuit garnered. We won -- just in a different way. It's because we had a backup plan basically.

[PLEASE NOTE: At this point, the video becomes very choppy and incoherent. However, the original transcript indicates that the substance of the interview is important so we provide that here. The transcript of the rest of the video picks up at the end of the brackets....

Neville: Why do these problems exist at these school districts? Is it because of turning their head the other way, not understanding, covering it up, actual prejudice? What are the reasons this occurred?]

Adele: Though all schools are supposed to have Title IX coordinators [and all schools are given guidance by the US Department of Education on what their obligations are to comply with all federal civil rights laws -- schools, I find in particular K-12 school districts, really it's like the wild, wild West. They have no idea what their obligations are under federal law.

Sometimes] it's a lack of funding. [They are not training employees and administrators properly. There's a better understanding of what federal civil rights obligations are at institutions of higher education than K-12 schools. Although we see lots of problems at institutions of higher education too, but it's far worse at the public school district level. That's really unfortunate because if you can nip this problem in the bud, we wouldn't have as many problems as we do] when kids head off to college.

Part of it is a lack of training, a lack of education. But there is another problem, which is that too many school officials bury their heads in the sand when it comes to racial injustice and gender injustice. When there's sexual assault, there's a lot of enabling going on. People pass the buck. This happens with teacher-on-student sexual assault. This happens with student-on-student sexual assault.

Say it's a teacher who sexually assaulted someone -- they'll pass the teacher on to the next school district without keeping a record of why, and then that teacher goes on to assault other students. Or it's often, unfortunately, based on [rape myths](#).

There's a lot of stereotyping that's involved here, too. Young women who come forward, especially young women of color or a member of the LGBTQ community, when they report that they've been sexually harassed, very often, the initial response is that they are not believed. School officials will say things like, "Well, why did it take you so long to report?" -- not understanding, because they're not trained, that it often takes young people a long time to come forward to report that they've been sexually harassed and they'll make assumptions like, "Why didn't you fight back harder?"

If the person isn't really badly beaten or bruised, they'll assume that what happened was consensual. Again, this goes back to the lack of education and training, and so there's a lot of enabling of the continuation of sexual harassment.

Neville: I know one of the areas you've been involved in has been bullying. I remember hearing about a case you had of Jewish kids who were harassed.

Adele: That is not just straightforward bullying -- it also involves harassment. I say "harassment" because the kids who were bullied were bullied based on a characteristic that's protected under federal civil rights law. In this case, [T.E. v. Pine Bush Central School District](#), we represented five Jewish students who were severely bullied and harassed based on the fact that they were Jewish. This is something that is protected under [Title VI of the Civil Rights Act](#), harassment based on race or ethnicity, and the assumptions that a lot of these students were making about these Jewish kids were based on stereotypes about Jewish people.

For example, they would make jokes about Jewish people being greedy or Jewish people being cheap. They would take pennies and shove them down their throats. They would do 'Heil Hitler' salutes. There were swastikas all over the school. We ended up defeating the school district summary judgment motion after litigating for several years, and then the school district finally came to the settlement table.

In addition to paying the five families a significant sum of money, we got large scale systemic reform to the policies and procedures, and the education and training programs and monitoring and climate surveys -- just so we could help to change the culture of that school district.

Neville: It sounds like one of the ingredients of your settlements, in most cases, is a systemic change?

Adele: Yes, absolutely. It's a critical piece of the cases that we do. If it were just about money, it really wouldn't be impact litigation. The money piece is the justice for the wrongdoing to the individuals. But the injunctive relief or the systemic reforms are the changes that last so other students don't have to experience what the students who we represented experienced.

Neville: When you file a case now does the school district just go running for the hills?

Adele: I wish I could say that were true. Sometimes we are successful with a pre-suit demand letter because of our reputation. But not always because a lot of school districts are quite stubborn and they dig their heels in. As in many other cases, it's often driven by what an insurance company wants to do and sometimes these cases are exceedingly hard fought.]

Neville: Talk about the quality of lawyering that you're up against.

Adele: It varies. These cases are generally quite challenging for a number of reasons. Very often the school hires a private law firm to represent it in the litigation. When we sue a university, if it's a state university, then it is a government entity that's involved. Most of the time when we sue a school district, we are dealing with private counsel and then, often, also an insurance adjuster who is calling the shots.

[Neville: Are these cases fact-driven mostly or legally-issue driven, or both?]

Adele: Both. These cases are driven both by facts and law. There are certain types of legal defenses that we see over and over again. So, for example, one thing that we are running into quite often now is that school districts will try to defend a case where a student was sexually assaulted one time by saying that they don't have any responsibility under Title IX to address the sexual harassment unless the student was sexually assaulted a second time. Basically, it's the "one free rape" rule.

They're making this argument over and over and over again trying to escape liability because the student wasn't sexually assaulted a second time after reporting. This is some- thing that, so far, we've been successfully battling, saying, "No, there's no 'one free rape' rule. If you do not address the hostile educational environment that occurs after the sexual assault and take steps to ensure that this student can get his or her education safely in a welcoming environment after reporting the sexual assault, then you are on the hook and you need to take care of that."

[Neville: Are some areas of the country or districts worse than others for sexual assault, bullying, these kinds of cases you have?]

Adele: I would like to tell you that there's an area of the country where school districts are doing a really good job in handling racial harassment and sexual harassment, but I have not found a school district that I think really does a good job yet.

There are some places where it's worse than others. School districts that get less funding and just don't have the money available to, for example, have the required Title IX Coordinator and have the training that they should have to make sure that the Title IX Coordinator and others understand what their job responsibilities are --that also students understand what they can and can't do, and who they're supposed to go to -- schools that have less money often do a worse job.

[Neville: How do you decide to take on a case and once you do, how do you work it up and how do you bring in, or if you do outside counsel to help?]

Adele: We are very strategic about the cases that we take in the Student Civil Rights Project. We are looking to see if any of the cases involve a gender justice or racial justice issue. By gender justice, I'm not just talking about sexual assault, I'm also talking about issues involving harassment of LGBTQ students. It also might not be sexual assault -- it could be something like dating violence that doesn't actually involve sexual assault. We're looking at a variety of forms of gender justice issues.

And also on the race front, we're looking at -- not just harassment -- but is there discriminatory discipline? Are Black students being disciplined far more frequently than white students and for things that white students don't get in trouble for, like dress code violations or something like that?

We're looking at discriminatory discipline and racial harassment, and various forms of gender-based discrimination.

We're also looking to see if any of these cases involve an area of law that is still in flux and we're trying to make sure it's developed appropriately. The further harassment issue that I was talking about before -- making sure that courts don't interpret the law so narrowly that there is a "one free rape" rule.

Also, we're looking for cases where courts will understand that dating violence is, in fact, gender-based harassment -- it's not just based on some interpersonal dispute that very often a reason that, say, an intimate partner abuses his or her partner has to do with gender-based stereotypes.

[Neville: Where do the cases come from?]

Adele: The cases come from a combination of sources. Sometimes it is just a layperson who writes to us or calls us, and we end up taking some of those cases. But more often, it's from another attorney who either doesn't litigate these kinds of cases, doesn't do it often, or it doesn't do any litigation.

It could be a public interest group that doesn't do litigation. For example, it might be a group that we have a relationship with that does advocacy in this space. Like [Know Your IX](#), for example, might say, "Hey, can you help this student survivor out. We don't litigate and we heard about this, and maybe you can help this person out." 22820

One other source of our cases is that we proactively reach out to attorneys based on following what cases or have been filed and decided. Sometimes we'll see, for example, that an attorney litigated a Title XI or a Title VI case, and they got a bad decision on an issue that's still a legal issue that's being developed in the courts and hasn't really been decided one way or the other yet. We'll reach out and say, "Hey, would you like us to come in and help you either amend your complaint or handle an appeal in your case." That's another way that we're actively trying to shape the law in a positive way.

In terms of how we get approval to take cases, we have a committee, the Case Evaluation Committee, that will look at all the cases that we recommend. We will write a memo and lay out who we'd be representing and who we'd be working with in terms of co-counsel, in terms of what the financial arrangements would be. We have to get approval from our Case Evaluation Committee before we can take on any case.

[Neville: Do you usually get attorney's fees when you resolve these cases?]

Adele: Yes. All of these civil rights cases that we're bringing under federal law are fee-shifting cases, which means that if we win, the defendant has to pay our fees. Pretty much all the work that we do in the Students' Civil Rights Project involves the payment of fees by the wrongdoer. So, if we win, we get paid.

[Neville: Let's talk about some of your favorite cases.]

Adele: I don't have one favorite, but there are definitely a few that really have stood out over the years, sometimes because of the result, sometimes because of certain events that happened, and sometimes because of who I've gotten to work with.

One thing you asked about earlier, Neville, was the teams that we put together to work on cases, and we often work with other members of Public Justice, sometimes board members, but we work with attorneys who are typically plaintiff's side attorneys, almost always, and those who aren't members of Public Justice when the case started usually become members after they work with us.

One case that stands out for me, in particular, is a case that I worked on with Board Member [Linda Correia](#) -- *Flood v. Florida Gulf Coast University*. This was the first case I got to work on with Linda. We've done many since.

This case involved a really successful volleyball coach, Jaye Flood, at Florida Gulf Coast University, who spoke up about gender inequities in her school sports program. When she did so, the school retaliated against her and fired her. Another coach, a golf coach, Holly Vaughn, ended up joining the case. She quit after voicing her concerns about gender inequities in the school's athletic program, and was essentially, constructively discharged.

We represented these two coaches. What was so memorable about this case was mediating with Linda Correia. During the course of the mediation -- this was in Fort Myers, Florida -- the mediator pulled Linda and me out into the hallway, out of earshot of our clients, because he thought that our settlement demand was too high and he thought we were being unreasonable. At one point, he said to us, "Do you understand what part of the world you're in? Here, we get a million dollars in a dead baby case."

Linda, without batting an eye, calmly responded and said, "We're here to change your world."

That, to me, is emblematic of what Public Justice does. We're here to change the world. We're here to bring more justice to the world. That case is so memorable because of that particular moment. Despite the mediator telling us we were asking for too much, what we ended up getting in that case was \$3.4 million for the two coaches and systemic reform in the form of five years of monitoring by an outside Title IX expert to make sure that the university was in full compliance with Title IX. It was a great result, both individually for the clients and to change what was happening at the school. I will

say, as a result, again, of all the publicity and the work that we did on the case, the athletic director left after we settled the case.

[TRANSCRIPT ONLY: I'd like to tell you about one more case that's probably the most memorable case I've worked on at Public Justice.

[Castaneda v. the United States](#) and [Castaneda v. the State of California](#) -- two companion cases that we filed -- are probably the most memorable cases, and the most significant cases, in some ways, that I've worked on since I've been at Public Justice, for a number of reasons.

One is that they're the longest cases, in terms of litigation. I worked on them for eight years. I've never had any other case I've worked at Public Justice last that long. The federal case went up to the Supreme Court and back down to the trial court.

The state case, we tried the case, got reversed on appeal, and still got a great settlement in the case.

These cases involved [Francisco Castaneda](#), who was an immigration detainee that had a sore on his penis and was never given a biopsy, even though he had been in detention -- first in state custody, and then in federal custody -- for 15 months. Every doctor that saw him said he needed a biopsy ASAP to determine whether the lesion on his penis was, in fact, penile cancer. He never got that biopsy and he died as a result.

This was also the first client I had that I had represented that died while I was representing him. I went to his funeral. That was very, very emotional for me, to have a client die while I was representing him and then I represented his daughter and the estate in a lawsuit. I felt a particular sense of urgency to make sure that we got a good result for that family after watching him suffer in a way that he never needed to. Detainees are not entitled to the Cadillac of medical care, but they're entitled, under the Constitution, to adequate medical care, just basic medical care, and he never got that.

After losing at the Supreme Court and going back to the trial court -- because we had a backup plan -- we could still sue another entity. And after winning at the state trial court and losing at appeal, we still had another backup plan. We could go after another entity. We ended up getting the family [\\$3.2 million in a settlement](#), and because of the publicity on the case, and a related case that was being litigated by the ACLU's National Prison Project, detainee healthcare policies were changed so that detainees were no longer only entitled to emergency care, which meant you could only get care if you were about to drop dead right now, but they were entitled to get urgent care. We helped to make policy change and got justice for the family after an eight-year battle, watching a client die, going to trial, and going up to the Supreme Court. It was quite something.

Neville: Is there a collegiality spirit at Public Justice?]

Adele: Absolutely. It is the most collegial place I have ever worked. I feel lucky every day to work with such brilliant and kind and compassionate colleagues.

[TRANSCRIPT EXTRA:

Neville: What is your feeling about the justice system since you've been working in this arena? Do you find that courts are more responsive and open to the kinds of cases you're bringing in or that it's tougher, or it depends on the judge?

Adele: In terms of courts being receptive to the arguments that we are trying to make, it's been a rollercoaster ride. It really depends on a combination of things.

I'll give you an example. There was an area of law that I practiced early on in Public Justice. I filed a lot of disparate impact claims under Title VI. These were racial justice cases where I did not have to prove that the entity had discriminated intentionally against my clients, but just that the rules that they had put in place were having a disproportionate impact on Black students or Black employees.

In the education arena, these disparate impact cases that I had been very successful in bringing got completely shut down by the US Supreme Court in a case called [*Alexander v. Sandoval*](#). They said, "No, you can't sue for disparate impact under Title VI. You can only sue for intentional discrimination." That had been a major part of my practice and I just had to move into another area because it was shut down completely.

I think we're in another very challenging era because of the way our courts look. Our courts look very different than they did even four years ago. It's making it more challenging for us to win in our civil rights cases. We keep bringing them, but this is also why it's really important that we have other tools in our toolbox.

We're not just focusing on the litigation, we're focusing on the advocacy piece, and bringing public attention to the racial and gender inequities, so that even if we don't win in court, we might still get the result we are hoping to get, the systemic change, because of the advocacy work. If you have enough people on the ground who are raising their voices about what's wrong, then sometimes you can make a change that way. We're just taking a more holistic approach to making systemic change.

Neville: It seems as though Public Justice and yourself are the watchdog for the national community. Why aren't they self-corrected?

Adele: That is the million-dollar question, Neville. I would love it if schools were self-correcting. That's just not the reality. It's a lack of understanding. It's a lack of training. It's a lack of education. It's based on a lot of stereotypes. There's also, as in many institutions, when somebody does something wrong or doesn't take care of a problem, very often, they bury their heads in the sand because they don't want anybody to get in trouble, so they protect their own, and we see this time and time and again in school districts.

It is remarkable to me how often, for example, a serial sexual predator is protected by other people at institutions of higher education. It's not just institutions of higher education, we see this in churches, in the Boy Scouts.

We have a case we're litigating now on behalf of 126 male survivors of sexual abuse by a physician named Dr. Richard Strauss, who was a university physician at Ohio State for 20 years. It is based on Ohio State's own outside investigator that they hired.

We know that at least 50 people in the athletics department knew about the serial predation and did nothing. We also know that higher-up physicians knew. People at Student Health -- people high up in the administration knew for years and let this predator continue to prey on students and others for 20 years. Why does that happen? Because institutions protect their own. Because institutions will do almost anything to escape liability. We come in and we shine a spotlight on the wrongdoing, and in the process, try to get justice both for the victims and make a change so this never happens again.

Neville: Do you have any plan on retiring in the near future?

Adele: No. [laughs] I feel like I've just hit my stride, and I have a lot of years left in me to keep doing this work.

The best decision that I ever made in my career was to come to Public Justice. I get to work with phenomenal colleagues, both on staff and on our board. I have a lot of flexibility to take on what I think are the civil rights issues of the day. I get a lot of support. I get a lot of inspiration. It's just an amazing place where I can make a difference and feel good about the work that I'm doing.]