



Public Justice 40th Arthur Bryant

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[Neville Johnson: I'm Neville Johnson. I'm on the Board of Public Justice.]

Arthur Bryant: Hi. I'm Arthur Bryant of Bailey & Glasser now. I was the staff attorney and then the executive director and then the chairman and then the Chairman Emeritus of Public Justice from 1984 to 2019.

[Neville: In 1984, what was Public Justice at that time?]

Arthur: Its name was Trial Lawyers for Public Justice. I was joining it as the sole staff attorney.

[Neville: Was there an executive director?]

Arthur: Yes. The executive director was Tony Roisman in Washington DC. I moved from Philadelphia to Washington DC to become the sole staff attorney under Tony's leadership.

[Neville: Were you the first staff attorney?]

Arthur: No, my understanding is that there were at least two staff attorneys before me. The staff attorney immediately before me was Susan Saladoff. I once learned but do not remember, I apologize, the name of the staff attorney before her.

[Neville: When did Public Justice start and why?]

Arthur: Public Justice opened its doors on January 31st, 1982 as a result of an appeal from Ralph Nader to the plaintiff's trial bar. In 1980 and in 1981, Ralph made an appeal first at the Michigan Trial Lawyers Association annual convention and then at the Association of Trial Lawyers of America that the plaintiffs' bar needed to combine its skills and resources with the goals and information and movement of the public interest community to make the world a better place.

[Neville: Who funded it?]

Arthur: The primary funding came from individual trial lawyers paying an initial membership payment of at least \$1,000, as well as some foundation grant from the Mackintosh Foundation of \$275,000 to get the doors open.

When I arrived at Public Justice, I was the sole staff attorney. There was, I think, a summer intern, there was a receptionist and office manager, Tony Roisman, and there was some sort of a volunteer that wasn't clear to me, a science advisor, who I mostly met for a few months before he left.

[Neville: Tell us what those initial years were like.]

Arthur: Well, the initial years for me were fantastic. We were in the middle of doing some Clean Water Act citizen suits -- the first 25 ever done in the country within Natural Resources Defense Council and most of those 25 had settled.

I'd never done a Clean Water Act case before but Tony Roisman said, "Can you handle the negotiations for settling this case?"

I said, "Why do we want to settle it?" He said, "We want them to agree to clean up this polluted water and pay a penalty of at least \$25,000 and get our attorneys' fees." I got them to do all of that but instead pay a penalty of \$40,000, so he was very happy with me.

Beyond that, I quickly got approached with the first Title IX case in the country against Temple University it was, for women athletes who were discriminated on the basis of their sex. I became the lead trial counsel in that.

[Neville: Where did you come from? Did you have previous employment?]

Arthur: After graduating law school, I clerked for a federal judge for a year -- the first Black woman federal judge in the South. Her name was [Gabrielle McDonald](#). She was 36 years old and [President] Jimmy Carter made her a federal judge in Houston, Texas.

Her first day on the job was the day before my first day on the job. It was a wonderful experience of learning to be a judge together.

After 15 months there, I couldn't find a public interest job, which is what I really wanted to do. I left and joined a private law firm in Philadelphia that represented all the newspapers and magazines in town. It was called Kohn, Savett, Marion & Graf. I worked there for four years, primarily doing First Amendment cases. My very first case, astonishingly, went all the way to the United States Supreme Court and we won it.

While I was there, I not only did libel defense cases and advising the press, but I did a landmark sex discrimination case in Philadelphia.

Philadelphia, to my astonishment I learned in 1982, had a public high school that excluded girls on the grounds that it had a -- you're not going to believe this -- "separate but equal" high school for girls.

I was just stunned to hear this. And I said, "If you get me a client who wants to do that case, I've only been a lawyer for a year and a half, but if my firm lets me, I'll take that case because I guarantee you the boys' school will not be equal. It will be way better." And that's exactly how it turned out.

I tried the case, [I won the case. I got girls into Central High School in Philadelphia.](#) which only confirmed to me what I knew since I was 14, which is that I always really just wanted to be a public interest lawyer.

[Neville: You went to the Harvard Law School. Now you're a couple of years into Public Justice. What's happening? How did it expand?]

Arthur: So I joined Public Justice in 1984 as the sole staff attorney. I actually went to the lawyer I was working with in Philadelphia to tell him I was leaving to take the job. He said, "Arthur, how much more do we have to pay you to get you to stay?" The man's name was David Marriott and we're still good friends. And I said, "David, you're not understanding, this is a public interest job. I'm taking a 50% pay cut to get this job." He doesn't blink. He said, "How much less can we pay you to get you to stay?"

I started at Public Justice and after three years, Tony Roisman, the then- executive director, came to me and he said, "I'm going back into private practice. I'm taking the office manager with me into private practice to be my legal secretary. The woman who does fundraising and communications is going off to graduate school. It's you and the receptionist. Good luck." 35103

The board came to me, they offered me the position, and I said, "Look, I took a 50% pay cut to come here to be a public interest lawyer. I don't want to spend all my time raising money, and I don't know how to run an office. So if you, the board, will take more responsibility for raising funds and you'll let me hire an office manager who knows how to run the place, then I will become the executive director." And they agreed.

So, in 1987, I became the executive director of a national public interest law firm that consisted of me and the receptionist. That's how I started as executive director.

Well, when I became the executive director in 1987, the “business model,” to the extent there was the business model, was that Trial Lawyers for Public Justice would have membership dues of \$1,000, tax-deductible. And if you paid that \$1,000, you would never be asked for another penny for membership or anything else, for that matter. We would make all our money off of attorneys' fees because all of the private lawyers working on all of our cases would donate all of their attorneys' fees to Public Justice.

That had quickly proved unworkable because no one of the private lawyers was going to front all of the costs of these enormously challenging cases that none of them would take on to make money at that kind of level. The first thing we realized we needed to do, after pulling in a consultant who knew about fundraising because I did not, was create annual membership dues.

A key to the financial success of the organization was creating annual membership dues and other ways to raise money, in addition to attorneys' fees because it was a public interest law firm. It was not going to fund itself off attorneys' fees. It was going to have to fund itself another way with the attorneys' fees being part of the solution, by no means all of it.

After I became executive director in 1987 and we created annual membership dues, then the challenge was building the organization. That all came down to getting individual trial lawyers and law firms all around the country involved in the organization as members, involved in the organization as litigators and handling appeals, et cetera, and bringing onto the staff, top-notch lawyers who would focus on cutting-edge legal issues. Our membership could do the trials and the depositions and develop all the facts, but the cutting-edge legal issues, briefing and arguing them -- that was not their primary focus. We could bring in lawyers who that was their primary focus and specialty so the in-house lawyers would focus on the cutting-edge legal issues and strategy, and our members, who were handling the cases, would work with them to develop the cases, try them, and hold the defendants accountable. 35434

[Neville: Are you saying that in virtually every case, you had members or outside counsel working with the Public Justice team?]

Arthur: The entire model of the operation was to use our members' skills and resources to litigate cases. So, in all of the Public Justice cases, there was at least one trial lawyer or law firm member who was usually the lead counsel in the case. Often, it was many lawyers. When we handle the Exxon Valdez Oil Spill litigation on behalf of the environmental groups, [we had over 25 private law firms](#) as part of the Trial Lawyers for the Public Justice team, along with lawyers on staff, me, and others.

But that was the whole setup. It was how it was supposed to work. It was not to have lawyers just give money so people hired out of law school, who were smart would mitigate cases. It was so lawyers would use their own skills and resources on cases that would make a difference for the public interest, whether or not the case made money.

[Neville: Who funded the costs on those cases like Exxon Valdez?]

Arthur: Typically, it was our member law firms who funded all of the costs of our involvement. In the Exxon Valdez case, we were able to get the National Wildlife Foundation to contribute enormously to the cost.

[Neville: When you were the executive director, were you also the only lawyer there?]

Arthur: When I first became the executive director, I was the only lawyer there.

[Neville: When did you get help?]

Arthur: When you're building a public interest law firm almost from the beginning, you have to make some key decisions about what kind of an organization you want to build and what you want to take on, and how you want to take it on. A couple of the things I created, again with the board's agreement from the start, was that we were going to take on cases we thought we could win.

We were going to become a feared public interest law firm because if we were taking on that case, that meant that the defendant had to be very concerned it was going to lose. When our first staff attorney after me started proposing case after case that had this enormous reach but was almost uniformly unwinnable, we would refuse to take on the cases. After about a year, we had to let him go. Then we hired another staff attorney. But for some time, it was just me and a staff attorney.

[Neville: What are some of the notable first cases you took on that you're proud of?]

Arthur: Well, one of the very first cases that we took on was a federal preemption case involving airbags. It was a true eye-opener to me. The case was in the federal appeals courts. Someone had sued the auto companies on behalf of an injury victim, who was injured because the car lacked an airbag, and we filed an amicus brief in the case.

The plaintiff's counsel, [Sid Gilreath](#), was at that point an officer in the Association of Trial Lawyers of America. I was the one who had written the brief. He called me up and said, "Arthur, I read your amicus brief. You really know this stuff." I said, "Well, thank you." He said, "I was wondering if you would be willing to argue the appeal for me in the Sixth Circuit." I said, "Well, why would you want me to do that? You're the lead counsel?"

He said, "Look, my brief was written by a summer associate. I was in the middle of trial. I don't know this stuff very well. My summer associate's no longer here. You really know this stuff. Will you argue it?"

I took on that appeal, and what it really opened the doors to was understanding there was a key role for the lawyers on staff to specialize in arguing and briefing cutting-edge legal issues that our members' law firms often weren't set up to specialize in, weren't set up to dedicate their time to but we could become expert in and have an impact all across the country.

That case ultimately led to my briefing and arguing that [issue of federal preemption in cases involving airbags](#) all around the country, winning it in several states' supreme courts, ultimately arguing in the United States Supreme Court. But it started with a single amicus brief way back in 1985 or so.

[Neville: Public Justice would become an actual, not just amicus, but attorneys for the plaintiffs in these cases?]

Arthur: Oh, yes, we were co-counsel for the plaintiffs in most of the cases. As time went on, we got so many demands for amicus briefs, we had to turn down most of them because it was far more important to be representing the parties themselves.

What happened is once it was established that we knew the law, particularly in areas like federal preemption, mandatory arbitration, class action bans and abuses, court secrecy, we would get calls from plaintiff's lawyers all over the country, including our own board members and members asking us would we come in and co-counsel simply to brief and argue these cutting-edge legal issues because we became the national experts in it.

We would come in as co-counsel or appellate counsel focused solely on those kind of issues.

[Neville: Back in those days, was there any firm or enterprise similar to what Public Justice was doing?]

Arthur: Before Public Justice was created, there were other public interest law firms. For example, the ACLU did civil liberties, the NAACP did civil rights. But what most people didn't realize is both of those organizations were enforcing the Constitution and the constitution only applies to the government. The ACLU and the NAACP Legal Defense Fund were only suing the government.

What the plaintiffs' trial bar knows really well is that a huge amount of the injustices being done in this country are being done by huge corporations, not just the government.

That's why it was essential that if a public interest law firm was going to focus, not just on holding the government accountable, but also on holding corporations accountable for injuring people, it had to be the plaintiffs' trial bar that got involved. And that's why That's why Trial Lawyers for Public Justice, now Public Justice, was so essential.

Neville: Early cases that Public Justice took on that are memorable would be what?

Arthur: Among the early cases that we took on at the start was the [Woburn water contamination case](#); was the [Comanche Peak Nuclear Power licensing case](#), where there were whistleblowers saying repeatedly that this nuclear power plant in Texas was unsafe. They were punished for saying it. It turned out they were right. We helped stop the plant from going forward as it was. These were both basically put together before I joined Public Justice.

Once I got on board, it was the first Title IX cases in the country against schools for discriminating against women athletes; it was what became huge access to justice cases; federal preemption whether the auto companies could be sued for not putting airbags in cars; whether medical device manufacturers could be sued for defective medical devices, even though the devices have been approved by the federal government; whether drug manufacturers and pesticide manufacturers could be sued when their products hurt people because the federal government had approved their labels; and whether documents could be sealed in court of horrific wrongdoing and dangerous projects injuring people nationwide that corporations had managed to get sealed that we helped unseal.

Those kind of cases were our first focus, along with the first Clean Water Act citizen suits case in the country against polluters, forcing them to comply with the law and pay penalties to the government.

[Neville: Let's go into the '90s. What was Public Justice doing then?]

Arthur: The whole story of Public Justice, at least since my involvement, was constant growth. I don't have the numbers for the 1990s versus the 2000s versus the 2010s, but it was a constant growth. The focus was always on expanding not just the membership to support the operation but since the whole model was working with and utilizing the skills and resources of our memberships on cases that would make a difference, it was the more members we had with us, the bigger the impact we could have and the more cases we could do, including the larger different kinds of cases, depending on what kind lawyers we got involved.

The original trial lawyers who formed then-Trial Lawyers for Public Justice were personal injury lawyers. Then as other lawyers, civil rights lawyers got more involved, as environmental lawyers got more involved, as class action lawyers and appellate lawyers got more involved, the scope of what our membership could do increased enormously. So the scope of what we could do increased enormously, along with our ability to hire more attorneys on staff increased. That expanded things even more.

When I became the executive director of Public Justice, it was me and the staff attorney. We had fewer than 25 annual members. We had a handful of cases on the docket. Our annual budget was, I think, \$275,000.

When I left Public Justice at the end of 2019, we had we had 43 staff, 23 lawyers on staff, over 2700 annual members. Our annual budget was, I think, \$8 million. We had the broadest range of cutting-edge, high-impact cases of any public interest law firm in the country, from the trial courts all the way to the United States Supreme Court, in both the federal and state courts.

[Neville: What are some of the cases or areas that Public Justice has been innovative and successful in prosecuting?]

Arthur: The single most important area of Public Justice work over the year are [access to justice](#) cases -- cases that determine whether people can go in court and stay in court to hold wrongdoers accountable. We are in the midst of, and have been for decades, an effort by corporate America and radical people who are essentially trying to destroy our civil justice system, trying to shut the courthouse doors to more and more everyday people and government institutions trying to eliminate injured Americans' ability to hold the corporations and government officials hurting them accountable.

Public Justice has become the leader in the courts against all of these efforts to shut down access to the courts and basically leave people with no remedy at all. That includes federal preemption, mandatory arbitration, class action bans and abuses, court secrecy, and numerous other efforts that corporate America and the defendants in big cases come up with to try to eliminate the ability of people to sue them in court.

[Neville: Is corporate America winning?]

Arthur: The sad truth is that corporate America has been succeeding in squashing the rights of Americans to access the courts and hold the powerful accountable, partly through legislation, but more than anything, through rulings of the United States Supreme Court. I fear greatly for what will happen in the next several years.

[PLEASE NOTE: The extended video is choppy and difficult to follow. However, here is an edited transcript from the rest of the exchange between Neville Johnson and Arthur Bryant.]

Neville: Talk about the staff.

Arthur: One of the extraordinary strengths of Public Justice is the incredibly talented, brilliant, and dedicated staff that the organization has attracted.

Starting from the very beginning, one of the very first attorneys I was able to hire on staff was Adele Kimmel, who is a brilliant civil rights lawyer. Added to that, Leslie Brueckner, just a fantastic, probably now one of the very top appellate lawyers in the

entire country; Paul Bland, who became the nation's expert in mandatory arbitration and trying to preserve class actions, who's now the executive director: and before Paul, Jim Hecker, who I personally think is the single most effective, best environmental lawyer in the country. He's just won victory after victory after victory, created more and new theories to stop pollution and protect the public from polluters than anyone I know.

To hold on to brilliant lawyers and keep them for that long is extraordinary, and what it helped us do is then attract other brilliant, dedicated lawyers. The quality of staff has been one of the true strengths of the organization.

Neville: Is there any one case that comes to mind that you're particularly proud of?

Arthur: There have been so many incredible cases at Public Justice that it's really hard to point to any one case.

But early on, there was an attempt by corporate America to basically eliminate and settle all future asbestos cases for all time.

We were part of the effort to stop that from happening. It went up to the United States Supreme Court in two different cases - [Amchem Products, Inc. v. Windsor](#) and [Ortiz v. Fibreboard](#). We helped win both of those cases. They basically prevented corporations from not just using that device of class actions affecting future victims and settling their claims even before they knew they were injured, not just to affect asbestos cases but from using it going forward.

Another one I'll point to is the [polybutylene plumbing class action settlement](#), which might not sound like a sexy case.

The background is we actually had a staff attorney who had plastic pipes in her apartment that started leaking. She came to me and said, "I have this problem. I've looked into it. It turns out this is happening all across America. There are lawyers in Texas, sets of lawyers in America, who are representing people who are in entire housing developments where their pipes are all leaking, and they're suffering, each person is suffering, let's say, \$5,000 or \$10,000 worth of damages.

"Nobody's going to represent them for that kind of money. These lawyers are doing it, but you have to gather 1,000 other victims or at least 500 victims to get them to take it. I think this might be a case for a class action."

I helped put together this massive class action on behalf of everyone in America who had polybutylene plumbing in their homes, in their motor homes, in their apartment complexes, et cetera. We went into settlement negotiations.

It was a truly hard-fought settlement negotiation with [Ken Feinberg](#) as the mediator, with [Mike Caddell](#) as our lead counsel, with a group of lawyers working with us. We

ultimately ended up in settlement discussions with the three manufacturers who came to us in the settlement and said, "How much money do you want?"

We said, "How could we possibly give you a dollar amount when we don't know how many pipes are going to leak in the future and how many people are going to have damages in the future and what those damages are going to be?" We said, "Can you tell us what that will be?"

Ultimately, that settlement ended up being \$1.2 billion for these three companies paying to provide relief to millions of Americans whose pipes started leaking, both to pay for property damage and actually to entirely replace their plumbing systems. It was an extraordinarily unprecedented creative novel settlement that has since been followed in appropriate cases that Public Justice helped create with our co-counsel, and we're enormously proud of that.

Another line of cases at Public Justice that we started in the very beginning that I'm enormously proud of is our [Title IX litigation](#).

We got approached by the [National Women's Law Center](#) in 1985. I was asked to be the lead counsel in the very [first Title IX case in Philadelphia against Temple University for discriminating](#) against its women athletes and depriving them of equal opportunities, athletic financial aid, and treatment. After three weeks of trial, that case settled. After that, when ever a school would eliminate a woman's team, I would get called.

I would go to the school and I would say, "Just put the team back now. Agree to comply with Title IX, pay our attorneys' fees, and I go away. If you don't, we're going to file a class action on behalf of all the women athletes and potential athletes in the school for all of the ways in which you discriminate against women athletes in your program and we're going to force you to get into full compliance."

School after school settled until Brown University came along. In 1992, Brown University insisted it would not reinstate the two women's teams they'd canceled, and [we had to go to court](#).

It went exactly like I told them it was going to go. We got a preliminary injunction requiring them to reinstate the two teams as the case went forward. At that point, there was no case law or almost no case law in the country under Title IX. We went up to the United States Court of Appeals for the First Circuit, which ruled in our favor on every single legal issue, making a new law for women all across the country.

On the eve of trial, Brown University agreed to treat men and women equally, but it still wanted to argue about opportunities to play. We went to trial. At the end of trial, the judge not only forced Brown to reinstate or I should say continue the two women's teams that it was trying to eliminate but to upgrade, from club to varsity status, several other women's teams to add to its varsity program.

Again, Brown appealed. Again, [we won on every single legal issue](#), making, again, new law to help everyone around the country. The United States Supreme Court denied cert. It went back to the trial court. Brown came up with a client compliance program, so after six years, [Brown University entered into a settlement](#).

We made such a stink out of this and it became so prominent nationally that the president of Brown University was given, by Ms. Magazine, the Male Chauvinist Pig of the Year award.

After that, whenever a school would eliminate a woman's team, we would approach them and say, "You can either put the team back and get in compliance, or you can be like Brown University," and quickly schools stopped eliminating women's teams.

Neville: What are you doing now?

Arthur: I went full-time with Bailey & Glasser starting January 1st, 2020. I went to open up their Oakland office. Then in June of 2020, I get a call from my former [Brown University] lead counsel in Providence, Rhode Island, saying, "Arthur, you're never going to believe this. Brown just violated our 22-year-old settlement agreement. We have to get the band back together and go after them."

We did, remotely because COVID had started. We forced them to reinstate two of the women's teams they were trying to eliminate and actually exposed just how horribly Brown had acted. We obtained, unsealed and made public an internal email from the Chancellor of Brown University to the President of Brown University referring to the settlement and saying this is our chance to kill this pestilential thing -- at a time when Brown was publicly saying it supported gender equity and the settlement on Title IX fully.

We got Brown to reinstate two of its women's teams. It has literally been a school a month for almost the past year.

Neville: In all of those cases, you're standing on the shoulders of a precedent that Public Justice created.

Arthur: Yes, and in some odd way, I've now become a continuing legacy myself of Public Justice's work because I'm continuing it in private practice now.