



Nader-Claybrook interview

[Ralph Nader](#) and [Joan Claybrook](#) are two icons of the consumer rights movement in America. They are responsible for many of the lifesaving regulations we take for granted today such as retractable stop signs on school busses and seatbelts and airbags in cars.

Ralph Nader, 89, is a native of Winstead, Connecticut, where he built the [American Museum of Tort Law](#), though distant visitors can take a [virtual tour online](#).

A graduate of Princeton University and Harvard Law School, the 1965 publication of his book, [Unsafe at Any Speed](#) -- criticizing the safety record of the automotive industry -- became so influential it led to [President Lyndon Johnson signing the Motor Traffic and Motor Vehicle Safety Act](#) and the Highway Safety Act in 1966 and arguably led the National Highway Traffic Safety Administration four years later.

Unsafe at Any Speed is among the Library of Congress' original list of ["88 Books That Shaped America."](#) Nader has been named to the lists of the [20th Century's most influential Americans by Life](#), Time, and the Atlantic magazines.

He is also widely credited with founding the consumer movement, numerous organizations, including [Public Citizen](#), and with coining the term "corporate welfare."

Nader's June 1980 speech in Detroit to a conference of trial lawyers [is cited as the catalyst for the founding of Trial Lawyers for Public Justice](#) two years later. The name would later be changed to "Public Justice."

Joan Claybrook, 86, was born in Baltimore, Maryland and graduated from Goucher College at Georgetown University Law Center. She spent her early career doing legislative work in Baltimore, then Washington, D.C., where she met Ralph Nader. Joan worked as an executive assistant to the first administrator of the National Highway Traffic Safety Administration until 1970.

She then worked briefly for a congressional representative from Maryland before joining Public Citizen and becoming the organization's chief lobbyist as head of Congress watch.

In March 1977, Joan was appointed by [President Jimmy Carter to head the National Highway Traffic Safety Administration](#) – its first female director.

The automotive industry was less than thrilled, but [Automotive News sounded a more conciliatory note](#), writing: “We believe Claybrook will be beholden to nobody, including Ralph Nader - or any other special interest group. And we're looking forward to seeing someone at the head of NHTSA who understands the workings of the department.”

After Ronald Reagan's 1980 landslide election, promising a revolution of deregulation, Claybrook left the NHTSA to head Public Citizen. She was among the first to join Trial Lawyers for Public Justice and remains on the Board of Public Justice today.

Public Justice – Ralph Nader & Joan Claybrook

Public Justice: Ralph - what prompted you to give that speech in 1980?

Ralph: “Well, there were a lot of vacuums that reflected the gross underutilization of tort law by millions of wrongfully injured persons or next of kin. There weren't enough cases being brought. There wasn't enough focus on beating back the insurance lobby and other tort Pfizer's (?) lobby that tried to weaken the common law of tort by getting bills through legislators and state after state...”

So, I thought that trial lawyers, who are very much preoccupied with their own cases, they're sort of in their own silo, needed to be encouraged to rise to a higher level of significance by creating new public interest law organizations.

And that's what started our effort....

Public Justice: Joan, how did you respond to Ralph's speech?

Joan: “Well, I didn't know anything about it. He gave this speech and almost a year passed. Ralph had one of his existing staff people start trying to raise money for it. And that was impossible because it was too big a job. So he called me in the summer of 1981 when I had just been fired by Ronald Reagan and was looking for some work.....

And I met about 80 or 90 trial lawyers who came together for a meeting that Ralph called.

There was a great deal of enthusiasm for this. And the deal was there \$1,000 to be a founder and I promised that we would never ask them for money again, which is the biggest lie I've ever told in my whole life.

And so Ralph asked if I would keep on this. I was a volunteer, by the way, not for pay.

And so, on February 1, 1982, we organized a meeting and a dinner and the contributors and founders came to Washington. And we started Trial Lawyers for Public Justice. We really didn't know what we were doing and what we would do, but we knew that it needed to be done.

Public Justice: In a [2001 Frontline interview](#), Joan, you described how the auto industry blamed the driver for a crash.

Ralph worked on legislation that shifted attention to the crash-worthiness of the car.

Ralph: When there's a collision, if the occupants are not restrained, such as by seatbelts, airbags, protected rollover bars, laps in steering column, padded dash panels, head restraints, they're going to go through the windshield and get killed or seriously injured.

And the auto companies didn't have any interest in crash-worthy engineering designs. They were interested in style and horsepower, and they reveled in blaming the driver for every crash.

And so we developed the concept of *surviving* crashes and surviving the second collision. The first collision as the vehicle hits a tree or a wall or a rock. And the second collision instantly afterwards the driver and the motorist hurtling forward or sideways, depending on the crash and getting killed or injured.

And if we restrained the people in these high velocity crashes and improved the structure of protection and also improved the brakes and tires and handling characteristics, most of the deaths and injuries could have been prevented and in a future sense could be prevented with mandatory federal government standards imposed and enforced on the auto industry.

Public Justice: What Ralph just described led to the Auto Safety Act, which affected the liability law when challenged in [Larsen v the General Motors Corporation](#) in 1967.

The judge noted that the car was not *designed* to be crash-worthy, thereby shifting blame for the crash injury to the manufacturer, not the consumer.

Joan: Well, there are all sorts of systems that you can put into a car that mitigate the impact of the crash. Ralph has mentioned some of them. The classical steering assembly is particularly important because when you go into a frontal crash and you go into that steering column, it can crush your chest.

But if it has a collapsible feature to it, when a certain amount of force is imposed on that steering wheel and it collapses away from the occupant toward the dashboard, that will prevent, in most cases, almost completely crushing your chest.

So that's the kind of system that we're talking about. Airbags is another one. They come out of that steering column that's retracting, but it comes out and it protects you by spreading the forces across your chest and your head.

The airbag is really important to protect your head because you may have a seatbelt on that will save you from going into the dashboard or to the steering column. But it won't it's not soft enough to prevent serious injury to your chest. And that's one of the most important parts of your body and your head is obviously the most important.

And so there are other systems like door locks on doors that keep doors open. My cousin was killed – age 15 - in a crash where he was sitting in the back seat, didn't have a belt on because they didn't have belts in those days – it was the 70s - in the rear seat and the door flipped open and he flipped out on the highway at 60 miles an hour.

So there are so many issues. NHTSA has standards for what's called pre-crash - That's before the crash occurs, like brakes and the lights and steering and that has crashworthiness standards, which are for the things that I'm describing, mostly the collapsible steering assembly, the airbag, the belt and so on. And then post-crash tires.

So they have quite a large number of standards that are designed to protect the occupants, no matter what the circumstances of the crash.

And rollover is the more recent one that's come to light that you can really do a huge amount by designing the car properly so it doesn't tip over so that the occupant is protected when the roof doesn't crush on them so that their head is not crushed

So those are the kinds of standards that make all the difference in the world and the death and injury rate in car crashes.

Public Justice: Court secrecy has been a big issue from the beginning of Public Justice. Could you explain the importance of the discovery process and revealing information the corporations would rather keep secret.

Ralph: Well, this relates to the three functions of tort law. One is to obtain adequate compensation for wrongfully injured people such as medical malpractice victims, such as victims of machinery that's defective, consumer products that are defective, medical devices, for example, toxic substances, air water pollution, contaminated food.

The second is to disclose information that is not publicly available regarding these specific hazards to alert a larger public through the media to watch out, to demand recall of products, to demand federal and state safety regulations, or at least public hearings.

The third is deterrence, that when these verdicts and settlements hit the corporations in their pocket and expose their executives to depositions, they get the signal from the

company that's defendant to all the companies in the particular industry. Engineers get alerted. Maybe they get a better hearing inside the company because of the specter of litigation reaching their own company.

So it's compensation, disclosure, deterrence. Now, this requires full discovery and trials. The problem is that the number of civil jury trials has been plummeting for decades. In fact, some people think a jury trial is heading for extinction because there's so much pressure to settle these cases, especially by judges who don't like to spend time trying cases. They're not that industrious and they put a lot of pressure on plaintiff lawyers to settle, to go to mediation, especially in mass tort cases.

And second is -- there are terrible restrictions now from conservative Supreme Court and state courts on class actions. And that reduces enormously the number of people who can be represented fairly and expeditiously who have experienced common hazards from similar products.

And the third is, of course, the ultimate goal of the insurance lobby -- which is to get rid of the common law of torts entirely, turn it into a worker's comp system -- so much for a leg, so much for an arm -- where they can get rid of the trial by jury. They can get rid of the disclosure. They can get rid of the deterrence.

And so, this is a fight for health and safety for the entire community. And, as torts become more reflective of modern technology, tort lawyers are looking for torts of the future. And the one that's right on the horizon now on everybody's minds is the Silicon Valley tortious companies -- Facebook and Google and Instagram and TikTok -- in effect, seducing the youngsters through their iPhone or computer into the Internet gulag where they're exposed to harmful products, junk food, junk drink, violent programming; where they give up personal information that is sent, repackaged and sold to other companies anywhere in the world; and where the children are exposed to extreme nasty situations that lead to depression, sometimes suicide. And now there are hundreds of cases that have recently been filed by law firms around the country, creating this new tort from the Internet itself.

Public Justice: Joan, could you tell us what *public interest* means, in the context of Public Justice.

Joan: Well, public interest means activity in an organization operating in the public interest - activity that represents the interests of all the people without the special interests -- the manufacturers or the sellers or the designers -- demanding and commanding the activities of the organization. And so most nonprofits that do advocacy work such as Public Citizen are what we call public interest organizations, advocacy organizations.

And they go before Congress and they go before the courts and they go before the government agencies and they push for the adoption of safety standards or health standards or fair equity standards and so on. And so that's what a public interest

organization does. It's a nonprofit generally, although not solely, raises money from the general public, as opposed to any particular interest group.

Ralph: Public interest law is not limited by the prospect of the current likelihood of a retainer fee for the contingent fee lawyer. There are cases that are so expensive and so burdensome and take so long that lawyers who operate just on the contingent fee and don't charge by the hour just can't persist in undertaking them.

And so there's a gap there. And 95% of the wrongfully injured people or next of kin in this country that have actionable causes of action don't even see a lawyer, much less file a lawsuit. So the underutilization of tort law reflects vacuums such as inadequate support to make the courts more accessible, to expand the court budgets, which are only about 2% of state budgets so there are more judges, more courtrooms responding to the unfulfilled demand for justice by wrongfully injured people and to beat back the forces that want to destroy the common law torts and to write a trial by jury.

Now, all of these are not likely to be pursued by trial lawyers who are focused on their immediate caseload. And that's why we see a broader opportunity for what is called nonprofit public interest law that advocates for legislature or advocates for legislative changes, regulatory standard expansion, as well as invigorating the frontiers of the common law of torts by judicial decisions, and also encouraging people to serve on juries and educating people about the law itself.

Public Justice: Where do you stand now thinking about Public Justice?

Ralph: The way trial justice is at the present time – the [tort fees lobby, led by the insurance companies](#) -- they start these groups all over and they have fancy, fancy, deceptive names like Texans Against Trial Abuse. But they're there, right on top of the legislators in state capital after state capital. And if there isn't a countervailing force, we're going to see a dwindling number of actual trials, dwindling number of trials by jury and forcing limited number of cases compared to the fuller utilization of tort law to go to settlements under time pressure and coercion by judges who also take over the mediation process.

That is a very dim future for a republic that was started by our founding fathers, who put a number two [in their grievances to King George the Third](#), after no taxation without representation - the second one was 'you are taking away our right of trial by a jury of our peers in our community.' That's how they valued trial by jury and access to the courts.

And we should recognize their legacy by expanding access to the courts, expanding the number of litigated cases, expanding judicial resources and budgets.

So no discussion of tort law should ever sideline the serious, damaging role of these corporate law firms who love anonymity and love to develop secret settlements so that

there's no disclosure or deterrence arising out of tort law conducted in an open courtroom before a jury.

Joan: Public Justice started out with a few cases that were quite experimental, one that dealt with the FBI and the killing of a woman from Michigan who went to Mississippi to help in the integration of that state.

They accused the FBI of being involved in the killing of these three justice workers. And so they lost the case. But it really brought the organization together -- cause oriented, very, very cause oriented. And the lawyers from all over the nation were working together. They also did a nuclear power case where they surprised the industry by requesting depositions in about 15 different states, or maybe it was ten, all on the same day. And so it drove the company crazy to prepare to answer these depositions. And it showed the power of the lawyers from different localities working together and going after the companies that had caused this harm.

And they worked on court secrecy. That's something that was used to help sell people to join the organization. It's very important because often the defendants in these cases will request protective orders so that the information that's developed in the case, which is very valuable, is never known by the public and not known by the regulators.

And I had been a regulator and I knew that. And so I was able to articulate how important it was for the facts to be disclosed publicly so the regulators could bring lawsuits or investigations and try and penalize the companies that had caused the harm.

And to this day, there is a [major working project going on](#) court secrecy. Richard Zitron, who about five years ago [gave a substantial grant to Public Justice](#) to enlarge the work they were doing. And some of the trial bars across the country worked to get legislation passed, state legislation, that required the disclosure of information developed in court cases, whether it was on a defective product, a drug or a car, or whether it was on some kind of practice that industry engaged in that was very harmful to the public.

One of the most interesting cases that started off this was one case by Arthur Bryant, who was suing universities who allocated funds for sports activities and training and playing games, the football games, the basketball games and so on. They allocated it mostly to men, men's sports and the women's sports were really cheated.

And so he said that this was an equal protection issue and that the women had to have funds allocated for the sports programs of women on the basis of their proportion in the school paying those the fees for the sports. And it's one of the reasons that I believe that women's sports has grown so, so dramatically, both in terms of the Olympic Games and in terms of state games and in terms of the involvement, for example, of women in soccer. We were never involved in soccer before.

And so Arthur won that first case against Brown University. And it was a resounding victory.

And most recently, thanks to the pressure from Bill Trine, who was a president of Public Justice from Colorado for the sixth year that it operated, he was very interested in prisons and the discrimination against prisoners. And a woman named [Leslie Bailey](#), who is a staff person at Public Justice, has taken these cases and gone beyond belief, winning these cases.

There's another case that Public Justice worked on, an arbitration. And a lot of times companies will want to have arbitration rather than go to a court, rather than have a trial. And that's highly advantageous to the company because they do one arbitration case after another. They get to know the arbitrators and the arbitrators then make money during arbitration and they favor the companies. So they'll do more arbitration. But for the citizen, it's often very unfair. And the case is almost always decided for the companies. So Public Justice has made a [real practice of challenging arbitration](#) and has changed the law a lot, even though there are in fact, some statutory laws on arbitration favoring arbitration.

And there's a major one that was decided in [California dealing with truck drivers](#). And the question is whether or not independent truck drivers are employees or whether they're independent contractors. And we won that case. They're employees. So again and again and again. And also in the environmental area. But these are [the kinds of cases](#) that Public Justice has brought.

And now they've been bringing in recent years, cases involving students and the harassment of students and the impact of the Internet on students. And they've just been doing fabulous work in that area, too.

So there are so many reasons and advantages of having an organization that pulls together the trial lawyers and educates them and sustains them and encourages them and raises money from them. And that membership is a very powerful one. And the [board is a very large board](#) - helping each other and helping the organization grow and reach further.

Public Justice: Thank you both very much.