



# Public Justice: Redefining the idea of teamwork in the courtroom

*Standing for Truth, and Justice, and the American Way is more than just a catchphrase*

## STEPHEN ELLISON

Twenty-six years ago, the idea of trial lawyers dedicating their careers to public interest would have been an easy setup to a clever Johnny Carson one-liner. But the birth of Public Justice in 1982 was no joke. And today, with the support of more than 3,500 members nationwide, Public Justice boasts a decorated history of standing up for the good of the American public.

Whether it's for civil rights, consumers' rights, environmental protection or class action preservation, the firm originally called Trial Lawyers for Public Justice (TLPJ) has redefined the notion of teamwork in the courtroom. Public Justice is both a firm and a member association, combining all its resources to take on cases that normally might not see the light of day.

Executive Director Arthur Bryant says Public Justice, its staff lawyers and foundation members take pride in fulfilling their collective mission and not so much in filling their collective wallet. In fact, that is the firm's very approach to potential cases.

"The bottom line is, we take cases based on public interest and not to make money," Bryant says.

### Highest authorities held accountable

One ongoing Public Justice case is a perfect example. It involves a lawsuit filed by the firm on behalf of Francisco Castaneda, a Salvadoran native who died of

cancer in February. Public Justice is charging U.S. Immigration and state authorities with medical neglect for failing to treat his disease while he was in their custody on a minor charge. While Castaneda was detained, doctors found a lesion on his penis and repeatedly recommended urgent treatment, including a biopsy. By the time the biopsy finally was scheduled, immigration officials released Castaneda – purportedly to avoid the cost of both the procedure and the follow-up treatment, which included amputation of the appendage – and the cancer had spread.

Co-counsel Conal Doyle of Willoughby Doyle in Oakland summed up the case in the Public Justice's tri-annual report: "Government officials imposed a death sentence on Mr. Castaneda, without the benefit of judge or jury, by failing to provide a simple and inexpensive diagnostic procedure to rule out a life-threatening disease. This is a tragic case that could have been prevented by the exercise of basic human decency."

Says Bryant: "This is our government, our country treating someone like this, someone who was not a threat to society, who was basically a nice guy. This is not what America is supposed to be about.

"No one is going to take (this case) on as a moneymaker," Bryant adds. "We took it and beat a motion to dismiss."

When Bryant joined Public Justice in 1984 as its lone staff counsel, federal pre-emption was at the forefront of a much-publicized case pitting the estate of Karen Silkwood against her former employer,

Kerr-McGee. The U.S. Supreme Court eventually overturned a decision by the 10th Circuit Court of Appeals and concluded that awarded punitive damages in the original verdict were not subject to federal pre-emption.

Over the years, the battle against federal pre-emption has become a primary focus of Public Justice, the objective being to preserve injury victims' rights to their day in court, Bryant says.

"We believe Congress almost never intended to pre-empt injury victims' state law damage claims when it passed consumer protection legislation," Bryant says. "If the judicial system continues to get it wrong, there might be a need for new legislation. But our real goal is to have the courts get it right to begin with."

Public Justice Foundation President Sandra Robinson expresses a sense of urgency in battling federal pre-emption and other access to justice areas such as class action bans, mandatory arbitration and court secrecy: "Corporate influence and judicial missteps have conspired to create a decidedly uneven playing field," she muses in the firm's report. "Fighting these perversions of justice is more essential than ever."

### Teaming together

There are four ways a case could end up in the hands of Public Justice, according to Bryant:

- Potential plaintiffs contact the firm directly
- Private firms enlist Public Justice's involvement



- Other public interest groups, organizations, associations hire the firm
- The firm generates its own litigation

Public Justice's unique structure and flexibility allows it to cover a variety of cases without worrying about stepping on toes or damaging egos. There's a general understanding among private firms and public interest organizations that Public Justice is another option – or a better one – for bringing certain issues to resolution.

"With the nationwide support we have, we're able to form the best legal team possible," Bryant says. "Public Justice is the sole public interest law firm dedicated to using plaintiffs' lawyers' skills for the public good. (Plaintiffs' lawyers) support us, participate in much of our litigation, and at times call on us for help with their cases."

Public Justice has handled a number of sex discrimination and Title IX compliance cases in which college athletic de-

partments announced the elimination of certain women's programs. In each case, when the firm stepped in and threatened a lawsuit, the sport was reinstated.

Along the same gender equity lines, Public Justice in February helped win a case in Indiana that allowed a 16-year-old girl to try out for her high school baseball team, waiving a state regulation that prohibits girls from participating in baseball if the school offers softball.

### **Greener is cleaner**

While Public Justice's impact on citizens' rights and access to justice are well-documented, it also has been a prominent force in the area of environmental protection, from its 1982 nationwide campaign for compliance with the U.S. Clean Water Act to its role in increasing the federal government's recovery in the 1989 Exxon Valdez oil spill to its latest fight against mountaintop mining in West Virginia and Kentucky.

In a testimonial for Public Justice's 25-year report, Sean Donnelley, a client in a case against illegal asbestos removal, says, "It was refreshing to see attorneys fighting not only for a legitimate environmental cause, but stepping up to do it even when the citizens didn't have the resources to do it."

The firm's original vision of becoming the trial lawyers' public interest law firm has been surpassed, Bryant says. Now, the aim is to become America's public interest law firm.

Sorry, Mr. Carson, no punch line is forthcoming.



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