

This Year's Top Five Reasons They're Attacking Your Right to a Day in Court

by Arthur H. Bryant

Here's the sad truth: Throughout America, corporations and government officials are violating the law, cheating people, discriminating against people, injuring people, even killing people – and they don't want to be held accountable. They know the courts are the one place they can be held accountable. So they are taking the next predictable, unconstitutional step. They are trying to limit and eliminate the rights to a day in court and a jury trial.

Those rights are protected by the U.S. Constitution and the constitutions of every state. We must preserve them. To demonstrate how important they are, Public Justice annually recognizes and publicizes the work of the trial lawyers who tried or settled the cases that made the greatest contribution to the public interest in the past year by naming them finalists for its nationally- prestigious Trial Lawyer of the Year Award.

This year's finalists were honored at Public Justice's Annual Gala & Awards Dinner on July 29, 2019, onboard the USS Midway Museum in San Diego, where the winner, *Hale v. State Farm* was announced. *Hale* was the culmination of 20 years of hard-fought, extraordinarily dedicated and creative litigation. It won justice and relief for cheated consumers while shining a light on corruption in judicial elections. The facts of the case, as well as those of the other finalists, summarized briefly below, show why corporations and government officials are attacking your right to a day in court.

Hale v. State Farm – Exposing Corporate Corruption of the Judicial System

When Justice Lloyd Karmeier was elected to the Illinois Supreme Court in 2005, one of his first actions was to break the deadlock in a 1999 case against State Farm, overturning a \$1.2 billion verdict in favor of 4.7 million policyholders who were given car repairs with inferior, non-original parts. The legal team representing the policyholders suspected that State Farm had financed Karmeier's campaign, but State Farm denied this and Justice Karmeier refused to recuse himself.

Even after a 2009 U.S. Supreme Court decision in *Caperton v. A.T. Massey Coal Co.* held that large contributions to a judicial campaign coupled with a refusal to recuse could constitute a violation of due process, the Illinois court refused to reconsider its decision. Plaintiffs' counsel, however, renewed their efforts to find evidence that State Farm funded Karmeier's campaign. Their investigation revealed the company had funneled millions of dollars to the Karmeier campaign through intermediaries like the U.S. Chamber of Commerce, the Illinois Chamber of Commerce, and the Illinois Republican Party.

Using this new evidence, in 2012, counsel filed a new lawsuit alleging that State Farm had participated in a conspiracy to violate the Racketeer Influenced and Corrupt Organizations (RICO) Act by committing mail fraud when it denied in pleadings that it had not funded the campaign directly or indirectly. After six years of

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litigation, including briefings on more than 100 contested motions and depositions of 68 witnesses (including Chief Justice Karmeier), the plaintiffs' team won a \$250 million settlement days after the trial began, and mere hours before Justice Karmeier was set to testify.

The settlement includes a state-of-the-art distribution process that will pay nearly 1.5 million class members automatically, without the need to submit a claim form. By litigating this case as hard and as long as they did, these lawyers shined a spotlight on, and brought critical attention to, the problem of dark money and corruption in judicial elections.

TEAM: Robert Clifford and Kristofer Riddle, Clifford Law Firm, Chicago, IL; Elizabeth Cabraser, Robert Nelson, and Kevin Budner, Lieff Cabraser Heimann & Bernstein LLP, San Francisco, CA; Steve Blonder and Jonathan Loew, Much Shelist, Chicago, IL; Tom Thrash, Thrash Law Firm, Little Rock, AR; Gordon Ball, Ball Law Firm, Knoxville, TN; Don Barrett and Richard Barrett, Barrett Law Group, Lexington, MI; Patrick Pendley, Pendley Baudin & Coffin, LLP, Plaquemine, LA; Erwin Chemerinsky, Berkeley Law School, Berkeley, CA; George Bellas, Bellas & Wachowski, Chicago, IL; Brent W. Landau, Hausfeld LLP, Philadelphia, PA.

Other Finalists for 2019 Trial Lawyer of the Year Award

Ecological Rights Foundation v. Pacific Gas & Electric Co. – Stopping Pollution of SF Bay

Pacific Gas & Electric generates and provides power throughout wide areas of California, but has been polluting the San Francisco Bay in the process. The Ecological Right Foundation discovered that storm water discharges and dust tracking from at least thirty-one PG&E facilities in northern California contained levels of dioxins and pentachlorophenol (PCP) from utility pole treatments that dramatically exceeded regulatory agency standards, often by a factor of 10,000 or more. The dioxins discharged are known to cause birth defects, immunotoxicity, and harmful impacts on reproductive health, even at extremely low exposure levels. PG&E's dioxins and PCP releases often went directly into adjacent public waterways and wetlands. So ERF sued

PG&E under the citizen-suit provisions of the federal Resource Conservation and Recovery Act (RCRA) and Clean Water Act (CWA).

The district court held that the Environmental Protection Agency excluded facilities like PG&E's from regulation under the CWA because they did not constitute industrial activities under the Act. It also found that, under the RCRA's "anti-duplication" provision, the EPA's exclusion precluded regulation of PG&E's water runoff from regulation under the RCRA. So it ruled in PG&E's favor.

On appeal, the Ninth Circuit reversed. It held that the CWA exemption did not automatically preclude regulation under the RCRA. As a result, RCRA may now be used to hold corporations accountable for solid waste disposal not previously remedied because of regulatory gaps left by other laws.

After prevailing on appeal, through nine months of intensive settlement negotiations and mediation, ERF's team won a consent decree requiring PG&E to develop and implement pollution controls at its Northern California service centers. These controls will curb future PCP and dioxin releases from the sites, and ensure that any future releases are below what the law allows.

TEAM: Christopher Sproul, Brian Orion, and Jodene Louise Isaacs, Environmental Advocates, San Francisco, CA; Jason Flanders, Aqua Terra Aeris Law Group, Oakland, CA; Fredric Evenson, Ecology Law Center, Santa Cruz, CA; William Verick, Klamath Environmental Law Center, Eureka, CA.

Englund v. World Pawn Exchange – Holding Online Gun Sellers and Buyers Liable for Illegal Sales

On April 28, 2013, Kirsten Englund was shot to death by Jeffrey Boyce at a scenic overlook on the Oregon coast. Boyce was a mentally ill man armed with guns he purchased from an online dealer, which his mother then collected from the local pawn shop in an illegal straw purchase (where someone other than the true purchaser provides her or his name, completes the background check, accepts the gun, and hands it off to the true purchaser).

Boyce was able to purchase these guns because the online dealer, J&G Sales, had no systems in place to verify the true purchaser's identity. Federal and state firearms regulations require a background check on the true purchaser and allow the firearm to be transferred only to that individual. The dealer defendants sought to avoid this responsibility by arguing that neither could be liable for the online straw sales because one entity screened and sold the gun and the other entity did the background check and transferred the gun. This argument, if adopted by courts, would mean that a straw sale is impossible when one dealer supplies another dealer.

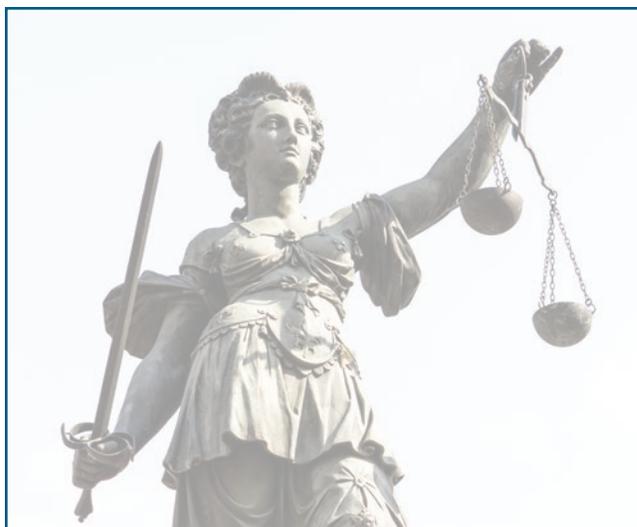
Englund's team, however, defeated that argument, and the case proceeded to trial. On the eve of the start of proceedings, the defendants settled. The financial settlements included a \$400,000 payment from Boyce's mother, believed to be the largest monetary settlement from an individual straw purchaser, and the only monetary settlement ever from an online gun dealer. The settlements also included business reforms aimed at reducing online straw purchases.

TEAM: Julie Goldsmith Reiser, Molly J. Bowen, and Sally Handmaker Guido, Cohen Milstein Sellers & Toll PLLC, Washington, DC; Raymond M. Sarola, Cohen Milstein, Philadelphia, PA; Erin Davis, Jonathan E. Lowy, and Josh Scharff, Brady Center to Prevent Gun Violence, Washington, DC; Thomas D'Amore, D'Amore Law Group, Portland, OR.

Gloria G. v. City School District of the City of Mount Vernon – Forcing Schools to Protect Students from Bullying and Rape

On December 19, 2011, a 13-year-old mentally disabled girl – ultimately the plaintiff in this case – was raped by an older male student after leaving her public school to go home. She was supposed to be placed on a school bus to travel to and from school, but instead walked home with her rapist. Incredibly, soon after her rape, the student was subjected to months of bullying by other students.

Evidence in the lawsuit proved the school was supposed to ensure the plaintiff was on a school bus on the day of her rape, but failed to do so. After the plaintiff faced months of bullying in the wake of her rape, the school



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Every year the state legislature makes numerous changes to our laws. Little by little, these changes are eroding an individual's access to our courts and in doing so, limiting your ability to practice your profession.

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promised on March 15, 2012 that she would not be unsupervised. Four days later, however, a teacher's assistant told the plaintiff "I don't care where you go," and the plaintiff went to use the bathroom in the girls' locker room. Four girls then attacked her, slamming her head against a bench and the floor. The attack resulted in brain damage and resultant memory impairment.

The school claimed that the girl was a willing participant in the altercation in the restroom, and further contended that she had fabricated the rape. It maintained this position despite evidence she lacked the cognitive skills necessary to fabricate such a claim, and that the substance of her rape allegations have been consistent over the years.

Despite the defense's victim-shaming, after four weeks of trial and a full day of deliberation, the jury found the Mount Vernon City School District 99% liable for the plaintiff's injuries, and one of her classmates 1% liable. She was awarded \$8 million for past pain and suffering, and \$20 million for future pain and suffering for 60 years. This is reportedly the largest verdict for a single-plaintiff sexual assault case in New York history.

TEAM: Andrew Buzin, Buzin Law, New York, NY;
Jordan Merson, Merson Law, New York, NY.

In Re Swine Farm Litigation – Making Factory Farms Pay for Poisoning Poor and Minority Communities

In the 1980s and 1990s, a building boom by the swine industry resulted in southeastern North Carolina counties being filled with large factory farms, often built without consideration of the rights and needs of families who lived in existing rural communities. The industry had a stranglehold on the state legislature and beat back efforts to increase regulation. As a result, rural areas, including low-income communities of color, suffered for years. They faced noxious fumes from swine waste, bouts of flies, and extraordinarily heavy truck traffic. Massive amounts of contaminants, bacteria and pathogens, ammonia, and other contaminants were released into the environment.

Mona Lisa Wallace and her law firm, Wallace & Graham, P.A., decided to take on the representation of these residents. They faced incredible opposition from the pork producer, Smithfield. It tried to pass bills in the

legislature to block the suits. It created and funded a proxy "grassroots" group to generate support from the public. Lawyers were tailed when they drove to meet families, and clients reported threats and intimidation.

A few months before the first trial, the powerful pork lobby worked with the Republican supermajority in the Legislature to pass a law that would have effectively granted the industry retroactive immunity from these suits. But the team fought it with everything they had, narrowly (by two votes) winning an amendment to exempt these lawsuits from the new legislation so they could fight on.

The team endured five lengthy trials spanning a year, winning each unanimously, and achieving record-setting verdicts exceeding \$500 million. Smithfield has appealed and the battle continues, but the results have already caused a positive change in the industry.

TEAM: Mona Lisa Wallace, Mark Doby, John Hughes, Daniel Wallace, Whitney Wallace Williams, Sophie Flynn, and Linda Wilke, Wallace & Graham, P.A., Salisbury, NC; Lynn Bradshaw and Michael Kaeske, Kaeske Law Firm, Austin, TX; Lisa Blue, Baron & Blue, Dallas, TX.

What's at Stake

These five cases demonstrate the extraordinary power people can have when they exercise their constitutionally-protected rights to a day in court and a jury trial. They can hold the powerful accountable and make sure justice is done.

These cases also show what trial lawyers and our system of justice can do every day: expose the truth and make wrongdoers pay.

That's why corporations and government officials are trying to use mandatory arbitration, federal preemption, class action bans and abuses, secrecy agreements and orders, expanded immunity doctrines, and other legal barriers to limit and eliminate the rights to a day in court and a jury trial.

We cannot let them succeed. Please share these stories and spread the word.