



Our Work Is NEVER DONE

AAJ CEO Linda Lipsen talks with
Past President Todd Smith about the
association's advocacy work and the
battle to protect civil justice and
access to the courts.

Interview by || **TODD A. SMITH**
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Todd Smith: *Linda, you started at AAJ (then ATLA) in 1993 as the director of Public Affairs. Each decade, each Congress, each administration has presented different challenges to civil justice. Can you tell us about some of those battles?*

Linda Lipson: There's always a fight. We have had so many challenges over the years with medical negligence, trucking, dangerously defective products, drugs, devices, tobacco, class actions, and more. A bill nearly passed in 2009 that would have wiped out all liability for car manufacturers during the auto bailout. And in 2005, there was a bill that was going to end asbestos litigation as we know it. The stakes are always enormous in these battles because if we were to lose, people could lose their rights.

How has the level of advocacy and the fight on different fronts changed over the years?

When I first started at ATLA, there were just a few big civil justice issues at the federal level. There was one bill that would have overhauled products liability law. It was a mammoth bill designed to undermine all causes of action involving dangerous products. It was like reading *War and Peace*.

But then the U.S. Chamber of Commerce's interest grew. It acts at the behest of the largest corporate interests. It got into medical negligence on behalf of Big Pharma. It lobbies on class actions and MDL tort issues for auto manufacturers and oil and gas companies. It lobbies on everything related to civil justice.

But it's not just the Chamber. It's every manufacturer you can think of—the machine manufacturers, the car companies, the drug companies. Then there's the corporate employer lobby, the banks, Big Tech . . . it goes on and on.

People may not remember this, but tort "reform" was President George W.

Bush's domestic policy. We had to turn that around. He started with medical negligence cases and then expanded that to nursing home cases and drug and device cases. He was single focused on it, and we had to fight back every single day.

Now the corporate community has unlimited venues to make their case to deprive people of their rights. They try to change the rules and try to eliminate people's rights all the time. They go where they think there's a sleeping dog. If they think the sleeping dog is in the state legislatures, they're going to go there. If they think the sleeping dog is in Congress, they're going to go there to push their proposals.

And that continues into federal agencies and the regulatory space also?

The Bush administration adopted a policy of preemption by regulatory preamble—in many rules that emanated from federal agencies, the agency would assert that its regulation preempted state tort law. During President Obama's terms, we got some regulatory rulemakings through—measures that were very helpful to consumers, particularly concerning forced arbitration. These made sure that arbitration was voluntary and that the decision about whether to go into arbitration was done when the injury occurred, not when the contract was signed.

We had a lot of successes in the agencies. But during President Trump's term, Congress reversed all the rules the Obama administration had promulgated. That was very frustrating. But there are some opportunities in the agencies to undo that harm. For the next four years, we're going to see whether progress can be made again.

Let's take a step back and talk about the journey that brought you to AAJ as the director of Public Affairs and led to you becoming CEO in 2010.

AAJ had a search committee for its Public Affairs director, and they asked me to apply. At the time, I was the legislative director for Consumers Union, the publisher of Consumer Reports. At AAJ, I saw a huge potential on the advocacy front—I thought, why aren't trial lawyers telling their clients' stories to Congress? Trial lawyers are the best storytellers in the country.

AAJ's Director of National Affairs at the time, Dan Cohen, who I knew from his Hill job many years before that, told me that I should take the job because I would meet the most compelling and interesting people. And he was right. That's one reason why we attract a really great staff.

I'm glad you mentioned the staff. We've watched them over the years and their great expertise in various areas. Can you talk about their impact on the association's advocacy?

We have such a strong team, and everyone has their role. People laugh at me when I come up with baseball analogies because I know nothing about baseball, but it rings true here. Some people are hitters. Some people are catchers. Some people can steal a few bases. Everyone on the team has a role, and they do it so well. They're fierce. No one—no group, no individual—in Washington will outwork them or outthink them and that applies to the rest of the staff here at AAJ as well.

I was in private practice for about

More than
800 MILLION
arbitration provisions affect Americans. (2018)
For more on forced arbitration, turn to p. 24.



To work for an organization that gets to make such a difference in people's lives is such a privilege.

three years. But it was very frustrating for me because it was so incremental. You could help one person or one company, but I wanted to make a different kind of impact, a policy impact for a broader range of people.

Everyone who we attract has that same interest, and they want to make a difference. To work for an organization that gets to make such a difference in people's lives is such a privilege. It's a trade association with heart. It's a cause, it's shared, and it's very rewarding.

You mentioned trial lawyers are great storytellers and harnessing that. How has AAJ adapted its advocacy approach over the years?

If we're going to tell our story, the messengers for telling that story are key. For example, we created the Women Trial Lawyers Caucus (WTLC) Lobby Days in 1997. Every other year,

women trial lawyers come from all over the country to speak to members of Congress about our issues. Participation has grown steadily, and at the last two WTLC Lobby Days in 2017 and 2019, we had close to 150 lawyers attend.



Attendees in front of the Capitol for WTLC Lobby Days in 2011.

We also focus a lot on research. We conduct focus groups and polling to see what the country thinks about our issues. We've evolved. We use social media to get our message across, which is really great because it reaches so many more people in so many pockets of society. What we've found—and this is just very gratifying—is that the public is with us. People want to assert their rights when they need to.

POLLING

In a recent poll, we learned that **64%** of respondents oppose blanket immunity for corporations from lawsuits involving COVID-19 infection.

Polling supports AAJ's advocacy by providing essential guidance on how the public perceives civil justice issues.

Is there a particular success that AAJ has had that stands out for you?

Success has a lot of authors. You can't get to the finish line without coalition partners, and we are so grateful to all the groups with whom we work. There really are so many uphill challenges that we've overcome—and we are so proud of that—but the most profound was our advocacy for the 9/11 Victim Compensation Fund.

We pushed so hard to establish the fund—the first of its kind—and followed that up with Trial Lawyers Care, through which our members from all over the country represented thousands of families for free, helping them get back on their feet to rebuild their shattered lives. I get choked up just thinking about it.

More than anything, this effort really showed who we are as an organization. It showed our heart. Those cases were not easy, and there was such a feeling of patriotism involved. Leo Boyle, AAJ's president at the time, said it best: We're not firefighters. We can't help in that way. But we can represent people, and that's what happened.



TRIAL LAWYERS CARE TODAY

Following in the spirit of TLC, Inc., today the "Trial Lawyers Care program" fosters and promotes trial lawyers' volunteer and charitable activities that serve the public good—providing food and clothing for vulnerable families, promoting safe driving to students, building affordable housing, helping communities after natural disasters, and more.

justice.org/TLC

COMING TOGETHER AFTER 9/11

On September 11, 2001, the world reeled from the largest terror attack in U.S. history. In response, AAJ created Trial Lawyers Care, Inc., through which members nationwide provided pro bono legal services to 9/11 victims and their families. AAJ also worked with Congress to create the September 11th Victim Compensation Fund, which paid out billions of dollars in aid.

1,000
trial lawyers
volunteered

More than
4,000
families counseled

876,000
hours of pro bono
legal help provided



Linda at home with her dog, Peaches.

More recently, AAJ worked tirelessly to prevent immunity provisions for corporate defendants from being included in pandemic relief legislation that passed in December 2020. What was that like?

This has been one of the hardest battles we've ever fought because our nation is struggling with the pandemic. People are starving and hurting. The country direly needed the emergency relief that Congress was providing.

Unfortunately—and I thought this was so cruel—what Republican leadership did in the Senate was to say to the nation, we're not going to give you those resources, we're not going to give you that unemployment check unless you also pass a proposal that would deny workers, nursing home residents, and patients their

“The COVID-19 relief bill provided much-needed stimulus to those in severe economic distress, without containing liability protections that promote the ‘profits over people’ mentality. It is hard to overstate AAJ’s indispensable role in its passage.”

—Derrick L. Walker, Allen Allen Allen & Allen, Richmond, VA

rights if they are injured by corporate negligence.

Every trial lawyer in America knows that almost any kind of case relating to COVID-19 would be very difficult to prove because the virus is everywhere. But in some circumstances, some businesses have acted in an unsafe manner, flagrantly not following COVID-19 safety protocols. When businesses are not behaving reasonably, liability is critical to protecting people. Removing any kind of liability on the part of the employer or the business owner is wrong. If a workplace is dangerous, people are going to get the virus. They're going to go home and give it to their family. Their family is going to give it to their neighbors.

And it's not over because the country is still going to need some resources to get back on its feet. It's never over for us. But we are very pleased that at least the December 2020 package didn't contain any measure that would eliminate an individual's rights.

Let's talk about the judiciary. During Trump's administration, he appointed 234 federal judges, including three U.S. Supreme Court justices. What is the impact of that, and what do you think is ahead for President Biden's judicial nominations?

“Even during an intensely chaotic time, AAJ’s Public Affairs team fought back some of the worst tort ‘reform’ measures one can imagine—our clients came out of the negotiations over the COVID-19 relief package relatively unscathed.”

—Lori Andrus, Andrus Anderson, San Francisco, CA

Many of the judges who were confirmed have a very right-wing orientation. They're young, lack legal experience, and are overwhelmingly male. I think President Biden is going to have a real opportunity to turn that around.

I think there's going to be a different attitude toward approving judges than under previous administrations. They're going to go a lot faster than we've seen in other Democratic administrations. Hopefully they'll be professionally diverse—not just gender and racially diverse. You need judges on the bench who actually know how a trial works.

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87%

of Republicans and

83%

of Democrats would support federal legislation to end forced arbitration for consumers and employees. (2019)

In six consumer financial markets, including credit cards and private student loans, consumers prevailed in arbitration only 20% of the time. (2010–2012)

61%

of consumers believed they still had a right to go to court under the terms of a forced arbitration provision. (2015)

AAJ's 2019 research report shed light on the perils of forced arbitration. justice.org/resources/research

60 million

U.S. workers are subject to forced arbitration clauses. (2018)

LEADERS FORUM

Established 20 years ago, Leaders Forum offers members the unique opportunity to increase their firm's visibility, grow their practice through referrals, and take advantage of exclusive products and services. Leaders Forum connects **more than 4,700** AAJ members through networking opportunities in **45** states, the District of Columbia, the Virgin Islands, and Canada. It helps support AAJ's operating budget, including its advocacy work.

For more, see p. 26.

For a full list of all Leaders Forum members, see p. 54.

justice.org/leadersforum

None of this can be done without resources, and the AAJ PAC obviously is critical. What is your message for AAJ members about how essential it is to support these efforts?

We need to support members of Congress who support the work that trial lawyers do. If your member of Congress

supports the issues we care about, that's very important. The AAJ PAC is critical. We're at 15% participation among our members, but we need even more buy-in. We fight for justice, and we have a lot of challenges ahead. The midterms typically are tough for the sitting president's party. The House and Senate have a very thin margin. Adequately funding AAJ PAC is a priority of ours.

As to the resources to do the work that we do, the other side has millions and millions to put into this fight. We don't need what the other side has because we have the truth on our side. But we must have enough. Some lawyers say, I've been giving so long, can I be done? And I have to say no. You can't be done because this fight will never end. But it's so worth it. You're making products safer. You're making the air we breathe less toxic. All the things that trial lawyers do—we must keep that going. ■

AAJ PAC

As the only federal PAC dedicated to preserving the constitutional right to trial by jury, AAJ PAC is an integral part of AAJ's mission. It is nonpartisan, supporting pro-civil-justice candidates from both sides of the political aisle. In the past cycle, **80%** of AAJ PAC-supported candidates won their races, helping achieve pro-Seventh Amendment majorities in the U.S. House of Representatives and the U.S. Senate.

justice.org/AAJPAC



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