

# **A Civil Action Study Guide**

## **A Civil Action by Jonathan Harr**

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# Plot Summary

Children in Woburn, Massachusetts are getting sick - terribly sick. When Anne Anderson discovers that her three-year old son has leukemia, she embarks on a quest for its cause, only to discover what constitutes a childhood leukemia cluster in her small town just north of Boston. One common environmental factor for all of these children is the water, pumped from Wells G and H, which has been a subject of complaint and controversy for some time, due to foul odor, taste, and color. Anne's research eventually evolves into a civil suit, on the part of many affected families, against two large corporations, Beatrice Foods and Grace Chemical, with the contention that they have contaminated the wells with a carcinogen, specifically trichloroethylene (TCE).

Author Jonathan Harr traces the course of this civil action through the history of corporate dumping activities, backgrounds of all parties, the discovery and deposition phases, the trial itself, the verdict and, ultimately, settlement negotiations and appeals. Most of the story is recounted through the eyes of Jan Schlichtmann, attorney for the plaintiffs. He chronicles his time-consuming, laborious and horribly expensive preparation for what he believes will be a landmark case, sending a message to corporate boardrooms and netting the plaintiffs and himself huge compensatory and punitive damage awards. To this end, Schlichtmann spends over two million dollars for medical and geological reports and documents, employing experts at each phase of trial preparation. Defense lawyers, however, are focused on maneuvers to detract and ultimately thwart the proceedings, often successfully doing so.

In the end, Schlichtmann must accept a less-than-attractive settlement from Grace Chemical, in order to provide the families some compensation and to repay creditors, netting himself a mere thirty thousand dollars. Attempts to appeal the verdict which vindicated Beatrice fail, even though Schlichtmann has uncovered new evidence implicating Beatrice in the contamination. Ultimately, the case fails to become the landmark decision for which everyone had hoped, and Schlichtmann is forced into bankruptcy, contemplating the termination of both his career and his life.

This true account of a community's attempt to hold corporations liable for their actions has much to teach about the judicial process itself. The reader will be amazed to discover the amount of preparation necessary for personal injury litigation and the tremendous cost of such civil suits. As well, the judicial process itself is often portrayed as skewed in favor of corporations, which have unlimited financial resources and high-priced, highly-experienced litigation attorneys. Indeed, it is easy to share Schlichtmann's frustration and anger as he wends his way through the continual roadblocks of a legal system that appears to be designed for the rich, the connected, and the experienced, rather than for the purpose of truth-seeking.



# **Boston, 1986; Woburn, Summer 1966; The Lawyer**

## **Boston, 1986; Woburn, Summer 1966; The Lawyer Summary and Analysis**

As attorney Jan Schlichtmann watches his beloved Porsche being towed away in repossession, he wonders what more can occur as he awaits the verdict in the most important trial of his life. His contemplations include the pitiful state of his personal finances, the impending closure of a practice drowning in debt, and some serious analysis of the wisdom of becoming involved in this case at all. The case has consumed him for nine years, has cost over two million dollars to bring to trial, and has damaged loyal colleagues and partners. Though the trial itself lasted a mere five months, the case began long ago.

In the summer of 1966, Woburn, Massachusetts, a small town twenty miles north of Boston, was a quiet, friendly place, with a central square and middle class neighborhoods, on the banks of the Aberjone River. Life was good in Woburn, and the once all-important leather tanning industry had been replaced by other corporate growth, most notably Monsanto and Grace Chemical Plants and one remaining tanning factory, owned by Beatrice Foods. This was the Woburn into which Charles and Anne Anderson moved when they purchased their first home in East Woburn, a middle-class residential neighborhood of families with traditional values.

By 1972, children in Woburn were becoming ill, specifically with leukemia, and Charles and Anne Anderson were clearly devastated with Dr. John Truman's diagnosis of this disease in their three year-old son, Jimmy. Anne was more than upset; she was a devoted mother who clearly demanded to know the cause of this horrible illness. Dr. Truman could not provide the answers; medical science had only suppositions and possibilities to offer. Undaunted, Anne launched her own investigation, beginning with the discovery that at least 3 other children in her own neighborhood suffered from the same type of leukemia as Jimmy. The first step in her quest involved interviewing each of the other families and thoroughly documenting the cases. The two common factors for all four children appeared to be the air and the water.

Water had been an issue in Anne's neighborhood even before she moved in. Until 1964, the water in East Woburn appeared to be fine. During that year, however, residents began to complain about a bad smell, taste, and color, and the complaints continued through 1967, when the two newest wells, Well G and Well H, were tested and found to have more bacteria than considered acceptable. Chlorine was then added to the wells, which supplied mainly East Woburn, but the foul taste and murky discoloration continued. According to the city engineer, the taste and color were due to high iron and manganese contents, but there was no potential danger from these elements. A citizen's committee was formed to keep pressure on the mayor and city council to do something



about the water. Official response was to turn Wells G and H off intermittently, when the rainfall was sufficient to do so, but to place them back in operation when drought conditions required.

As more children contracted leukemia, Dr. Truman was finally willing to accept that the number of incidents constituted a cluster and contacted Dr. Clark Heath at the Atlanta Center for Disease Control, a researcher in the area of "leukemia clusters." Heath, in turn, received approval to send an epidemiologist to Boston to conduct research on this cluster. At the same time, the EPA had arrived in Woburn to require the removal of contaminated waste barrels, and, in the process, tested Wells G and H. Both wells were found to be contaminated with trichloroethylene (TCE), a solvent used to dissolve oil and grease and a suspected carcinogen. Anne Anderson, supported by her pastor, Reverend Bruce Young, moves forward independently, continuing their own research on the current twelve families dealing with leukemia. They had not yet considered seeking legal advice. Another mother, Donna Robbins, whose son also became ill with leukemia, joined forces with Anne and Reverend Young, and, as a team, they continued to pursue answers, despite the declining conditions of their children. In the end, both children died, as did other children in East Woburn, and even a few adults were afflicted with leukemia during this time. In addition to leukemia, other families in East Woburn reported a significant number of other health conditions, to include rashes, dizziness, and nausea. When Anne, Donna, and Reverend Young finally ran an advertisement in their local paper, soliciting contact from any families in Woburn who had health problems, ten responses came from families whose children had leukemia bringing the total number to twelve, eight of whom lived in East Woburn. The time for legal action appeared to be right.

Jan Schlichtmann became a life insurance salesman after college, married, and settled into a rather routine middle-class life in Rhode Island. The Watergate trials grabbed his attention, however, and he found law intriguing and felt that it could be used effectively to benefit the wronged. Following this new interest, he applied for and obtained a position as the Executive Director of the new Rhode Island chapter of the ACLU. While not a lawyer, he was in charge of intake and securing member lawyers to take specific cases. The first case to come in involved the ejection of protesters from the state legislative house. While Schlichtmann looked for a lawyer to take the case, he began to work on it himself, drafting the complaint and taking press interviews. By the time the case went to trial, Schlichtmann had entered Cornell University law school. He and his wife had also divorced.

Once graduated, Schlichtmann did not fare well as a rookie firm lawyer and became bored with a state government position. Finally, he set up his own practice in the town of Newburyport, Massachusetts, taking a few small cases and running up debt. His first case of note involved a suit spawned from the drowning death of a child, due to negligence of a construction company. He received one-third of the \$300,000 settlement. Paying off his debt and deciding that tort law was for him, Schlichtmann moved to Boston and distributed resumes to large firms, to no avail. He managed, however, to get a major case, representing the estate of one victim of an airplane crash, and this gave him an "in" with the prestigious firm, Reed and Mulligan, which



represented the estates of two other passengers. Schlichtmann and Barry Reed worked on the case together, and it was quickly settled for a huge sum. Impressed, Tom Mulligan allowed Schlichtmann to work at Reed and Mulligan, on a case basis, taking those personal injury suits that Schlichtmann believed he could win.

Anne Anderson and Donna Mulligan, both with children now dead from leukemia, had contacted Reed and Mulligan on several occasions, to pursue a suit involving contaminated water that they believed to be the cause of so much of the disease in their neighborhood. Mulligan gave the case to Schlichtmann, essentially to placate the parents. No work had been completed on the case, and it became clear that there was no proof relative to who had contaminated the water or even if TCE was a carcinogen. Nevertheless, Schlichtmann drove to Woburn, met with the families, explained that there was much work to do, and promptly buried the case under others that were far more promising. Kevin Conway, a rookie attorney with Reed and Mulligan, became Schlichtmann's assistant, and, together, they would uncover potential wins, go to work, and, more often than not, successfully settle in the plaintiff's favor. Schlichtmann, however, was still intrigued by the Woburn case, even though Conway termed it a "black hole."

Shortly before the three-year statute of limitations was due to run out for any legal action, Schlichtmann again drove to Woburn for a meeting with the families at Rev. Young's church. Young had been in contact with Anthony Roisman in Washington, D.C., the Director of Trial Lawyers for Justice, an organization with which Schlichtmann was familiar. Knowing that this organization had money for the investigation and that they were looking for a good environmental case, Schlichtmann immediately made a deal with Roisman. Roisman was to be the lead attorney, Schlichtmann simply the local legman. Preliminary investigation began, securing EPA reports and conducting visual inspections of Grace Chemical and Riley Tannery property, following an EPA suggestion that the TCE had probably come from these two factories. Eight days before the statute of limitations ran out, Schlichtmann filed the complaint, naming Beatrice Foods and Grace Chemical, as the entities responsible for poisoning the drinking water of East Woburn with TCE, "a potent central nervous system depressant that can cause severe neurological symptoms such as dizziness, loss of appetite, and loss of motor coordinations. It can produce liver damage and cause cell mutations and cancer." (p. 81) The complaint continued that this poisoning had caused a cluster of leukemia and the deaths of five children, and that parents were suing for both compensation and punitive damages.



# Rule 11; Orphans and Dogs; Discovery

## Rule 11; Orphans and Dogs; Discovery Summary and Analysis

Both Beatrice Foods and Grace Chemical, as is the case with any large corporation, have premier law firms to represent them in any civil or criminal action. In the case of Beatrice Foods, Jerome Facher, of Hale and Door, is given the task. Facher has been around for a long time, teaches part-time at Harvard Law School, and is an attorney with significant and comprehensive trial experience. He will be a formidable adversary for young Schlichtmann and has little concern about an environmental lawsuit, given that they are almost impossible to prove. Quite busy, he sends a junior partner, Neil Jacobs, to Woburn for the purpose of interviewing the tannery manager, John. J. Riley. Originally, the tannery was owned by the Riley family, but John was forced to sell it to Beatrice Foods when the EPA required that they build a waste-treatment facility, which he could not afford to do. The facility has still not been built, and Riley has stayed on as the general manager. Beatrice Foods is not in the tannery business but has purchased the plant for the purpose of producing labels for some of its products. Upon being questioned, Riley insists that the tannery has not used TCE since World War II, when it was a waterproofing agent for Army boots they manufactured. The property, however, is quite littered with barrels, some of them oozing a dark thick material with a bad chemical odor. Riley blames this on Whitney Barrel, a company close by which has been using the tannery grounds for a dumping site. The issue with the EPA does not relate to these barrels, however - it relates to wastewater which the factory is flushing into Boston Harbor. Jacobs concludes that if TCE has infiltrated Wells G and H, the culprits are other than this tanning factory.

The second defendant, W.R. Grace Chemical Company, is represented by William Cheeseman of Foley, Hoag, and Eliot. The basic defense for Grace is that it does not make chemicals and therefore cannot be responsible for the polluted wells. Having been sued previously for polluting groundwater, however, Grace takes the suit seriously and instructs Cheeseman to get a summary judgment which would settle the suit out of court. Grace made machinery for the food-packing industry and used TCE, according to management, once in the 1960's, but only one fifty-five gallon drum, for the purpose of hand cleaning small metal parts. Some employees had dumped small amounts in a ditch behind the plant but not enough to contaminate the wells, a full one-half mile away. Believing his client, Cheeseman thinks Schlichtmann will go away for a small settlement amount and is rather surprised to receive fifty-two pages of interrogatories. Cheeseman's response is to get the case moved into federal court and to charge Schlichtmann with Rule 11, the bringing of frivolous lawsuits, and barratry, the solicitation of complainants for groundless lawsuits. Among Cheeseman's early maneuvers is to obtain a change of court venue, moving the suit from state to federal court, because personal injury suits are not received as favorably at the federal court level.





In federal court, there is a lottery system for judge selection, and Judge Walter Skinner is the lucky recipient of the Woburn case. With a reputation as fair but tough, Skinner does not allow courtroom antics, wants civil suits settled by negotiation, and often threatens attorneys until they do so. He has read about the Woburn situation, however, and is a bit intrigued by the case himself. Further, he is familiar with all the attorneys involved, including Schlichtmann, and is willing to read the initial briefs and filings. Schlichtmann has done his homework well, and Skinner rules against Cheeseman on the Rule 11 and barratry, still assuming that the attorneys will negotiate a settlement, thus preventing the time and expense of a full trial. He obviously does not know Jan Schlichtmann well enough.

Although successful at Reed and Mulligan, Schlichtmann wants his own practice, and he takes his assistant, and another junior lawyer, Bill Crowley, with him when he leaves. As well, he is given a number of old case files that Reed and Mulligan have no intention of pursuing. Carefully, the three men study each file, identifying them as "dogs," cases with no chance of winning, or "orphans," those that might have merit. The Woburn case goes onto the back burner, Schlichtmann still believing that he is really secondary counsel to Roisman and his organization. The case still intrigues him, however, and when his new firm wins a huge medical malpractice case, he now has the money for a more thorough investigation and the employment of experts to provide scientific proof of what he now believes to be the certain contamination of the wells by Beatrice and Grace.

Another series of events serves to push Schlichtmann further into the eye of this hurricane case. First, he is given the results of a three-year Harvard School of Public Health study, concluding that there was a direct correlation between well waters from Wells G and H and a host of illnesses and birth defects, including leukemia. As well, he employs Dr. Robert Colvin, also of Harvard, to test all immune systems of family members of ill children, with the result that all of their immune systems have been compromised, they are all fighting a carcinogen, and the children who contracted leukemia had obviously lost the battle. Meanwhile, Cheeseman has secured affidavits from two other Harvard doctors, stating that there is no scientific proof that TCE causes leukemia. Schlichtmann, through all of this, is quickly using up funds, and calls upon Roisman for additional financing, only to find that they have dropped the case as too costly. Schlichtmann is on his own, if the case is to be pursued, and, by now, he is obsessed and committed to the families. Against the advice of his partners, who insist that this case is a "black hole," he moves forward.

Cheeseman and Facher are not unified on an approach to a defense for Grace and Beatrice. Against Facher's wishes, in fact, Cheeseman attempts to place blame on another chemical company, Unifirst, which had admitted to using TCE and having a "contained" spill. Now there are three defendants. Unifirst quickly settles with Schlichtmann, giving the Woburn plaintiffs over a million dollars to press their case against the other two. As Facher predicted, Unifirst, angry with Cheeseman, will now provide assistance to the plaintiffs. The two defense attorneys continue together, however, and depose all parents of sick and dead children. Facher realizes quite quickly





that the testimony of these parents will be devastating, and he must determine some way to prevent it.

During Schlichtmann's deposition process, in which employees of both companies are questioned, there is bad news for the defense. Grace has used much more TCE than it originally disclosed to the EPA and, in fact, had dumped toxic waste on a weekly basis during the 1960's. Tom Barbas, a worker in the paint shop, admits that he used TCE daily to clean parts before painting them, dumping a gallon or two of the waste in a gully at the back of the plant. When OSHA gave strict directives for the discontinuation of the use of TCE in the 1970's, supervisor Paul Shalline had drums of TCE and other waste buried under a new addition being built. Schlichtmann clearly has enough to make his case against Grace and, as well, informs the U.S. Attorney and the EPA of his findings. They both promptly begin an investigation of their own. Beatrice depositions do not go as well. John J Riley, son of the original owner and now manager, insists that the tannery has never used TCE, has never dumped any toxic material, and that no records exist prior to the three previous years. Witnesses are uncooperative or dead, many from cancer, and the evidence is certainly not as definitive. It is quite possible, moreover, that Whitney Barrel, a company just down the road, had contributed to the waste that had been deposited on Beatrice (Riley Tannery) land. Undaunted, and believing that Riley is lying, Schlichtmann moves forward against both companies.



# The Woodshed; Billion Dollar Charlie; Facher's Plea

## The Woodshed; Billion Dollar Charlie; Facher's Plea Summary and Analysis

The Woburn case soon consumes every waking minute of Schlichtmann's life, as he doubles his office staff and uses every inch of office space as a "war room." He hires a physician, heart specialist and neurologist to run tests on family members of all Woburn children who have or have died from leukemia. The results are as he expected - every family member exhibits symptoms or conditions associated with TEC exposure, including irregular heartbeats, compromised immune systems, rashes, dizziness, nausea, and specific neurological damage. In addition, a biochemist, Dr. Beverly Paigen, provides a detailed report on the travel of TCE into the human body, which provides intriguing information. According to Paigen, TCE can enter the body through drinking the water, by absorption into the skin during bathing, and, additionally, through inhaling steam during showers. Obviously, this significantly increases levels of exposure. Schlichtmann's case is now not just about leukemia; it is about solvent poisoning, leukemia simply being the worst result so far from the contamination.

All of the medical examinations and expert opinion affidavits, as well as the geological studies, bring the cost of the Woburn case to almost a million dollars. Out of money, Schlichtmann, with his financial advisers, James Gordon and Mark Phillips, seek and obtain another five hundred thousand dollars from the Bank of Boston, putting up Crowley's, Conway's and Schlichtmann's homes as collateral. In the midst of these financial pressures, Facher offers a settlement of one million, promptly rejected by Schlichtmann. Facher then threatens that the families will never testify at trial, a threat Schlichtmann sees as idle bullying.

Depositions on the part of both sides are beginning to consume enormous amounts of time, and Schlichtmann has not had the time to prepare his medical experts for the expected questions from opposing counsel. He verbally agrees to initial depositions regarding the examinations and tests, eliminating questions regarding their conclusions and opinions. Facher and Cheeseman, however, violate the agreement, causing Schlichtmann to lash out in anger, violate deposition legalities, and threaten his opponents. All of this is transcribed and delivered to Judge Skinner, who brings Schlichtmann in for a serious reprimand. This becomes known as the "Watershed Conference," and, Schlichtmann believes, the beginning of Skinner's lack of objectivity. Certainly, Schlichtmann has angered Skinner, who has a lengthy and mutually respectful relationship with Facher. In Skinner's words, "I warn you, Mr. Schlichtmann, I will deal with this in a way that will make headlines in American Lawyer if it happens again." (p. 227)



Rikki Klieman, a female lawyer who would like a relationship with Schlichtmann, suggests that Schlichtmann present the Woburn case to Harvard law professor Charles Nesson, in the hopes that he will provide advice during the trial process. She further suggests that Schlichtmann go with her to a judicial conference in Puerto Rico, because Nesson is a featured speaker and she can introduce them. Enthused, Schlichtmann agrees to go. Failing to get the promised meeting with Nesson, Schlichtmann takes the opportunity of the return flight to give Nesson the file to read. Nesson is fascinated and, as well, firmly believes that this case is not just about the families. A message must be sent to all corporate boardrooms that they can no longer get away with polluting America and endangering the public. In Nesson's opinion, the case is worth millions in punitive damages, in addition to compensation to the affected families. Schlichtmann is excited and offers Nesson a percentage of the verdict for his continuing services. He cannot offer payment at this time because, as Gordon has revealed, there is enough money only to make it through to trial, provided there are no delays.

Facher, however, has other plans. Never expecting Schlichtmann to get this far with limited resources, he has a mounting stack of files and depositions which he has not even read, much less understood. His next maneuver is to request a continuance for further preparation, a devastating event for the plaintiffs. Arguing strenuously, Schlichtmann manages to pare the continuance to one month, at which point Judge Skinner inquires about the prospect of a settlement. Schlichtmann promises to present figures the next day, and, against the advice of Crowley and Conway, now concerned for their homes, he presents an offer of one hundred seventy-five million, hoping to compromise at one hundred million. The additional caveat, designed to appeal to Skinner, is to ask that some portion of the one hundred seventy-five million be set aside for a foundation for leukemia research, possibly in Boston. The final offer will be twenty-five million in immediate cash to the families, twenty-five million for a leukemia foundation, and the remainder to be paid to the families over a thirty-year period. When this offer is proposed the next day, the defense walks out, and the trial is scheduled.

The first step in the trial process is jury selection. Because the impending trial has received significant publicity, including a 60 Minutes segment, Judge Skinner determines that he will be more intimately involved in jury selection. Instead of questioning potential jurors en masse, he holds individual sessions, with all attorneys present. As is always the case, each side has six peremptory challenges, by which they may exclude a potential juror for "cause." As well, Skinner can exclude any number of jurors. After six days of questioning, a jury and six alternates are selected, and both sides are faced with people about whom they know very little and some of whom they have grave reservations. Skinner's comment is, "You're not entitled to a jury of your liking. You're only entitled to an impartial jury." (p. 285)

Skinner has asked both sides for a "trial plan," an agenda for the presentation of the total case. While Schlichtmann's plan provides for the families to testify early on, Facher's plan divides the case into three phases, the first of which is to determine the validity of the well poisoning. Phase two will involve evidence of illness, and phase three will determine an award amount. Facher's strategy is to get Beatrice exonerated during phase one, without the jury ever hearing from the families. Skinner accepts Facher's



plan, but Schlichtmann, still consumed with the case and putting faith in Charlie Hesson's advice, remain optimistic. The week before trial, Schlichtmann receives a call to a settlement conference with Beatrice. During the negotiations, Neil Jacobs, sitting second chair for Facher, eventually offers eight million dollars. Schlichtmann must consider this seriously, as settlement with Beatrice would achieve two things. It would put more money in Schlichtmann's pocket, some to be used to press the stronger case against Grace Chemical, but, as well, it would rid him of Facher, the more serious adversary. Conway and Crowley lobby to take it, but Schlichtmann and others believe that the offer has been made out of fear of the trial. Schlichtmann calls Neil Jacobs and insists upon eighteen million, Jacobs responding that he will "get back to him." Over the final weekend before trial, Jacobs does not call.



# The Trial; The Vigil

## The Trial; The Vigil Summary and Analysis

The courtroom is packed for the opening statements. Phase One, the six jurors and six alternate jurors are told, will be to determine if groundwater poisoned Wells G and H with TCE and, further, if that contamination was caused by Grace Chemical and Beatrice Foods subsidiary, Riley Tannery. Schlichtmann's goal during this phase is to overwhelm the jurors and Skinner himself with all his expensive expert testimony and evidence relative to soil, water, and well contamination and the prevailing scientific and medical views that TCE is a carcinogen. Facher and Keating (Cheeseman's selection for this phase of the defense) must disrupt the flow of the expert testimony with frequent objections and attacks on any grounds possible, including discrediting as much of the expert testimony or as many of the experts themselves as possible.

Schlichtmann begins with the case against Beatrice. He presents a parade of witnesses who played on Riley land as children and who saw trucks dumping sludge, dead trees, and "nasty" stuff being poured out the tannery back door. Facher's frequent objections clearly obstruct the flow, but the stories are compelling, albeit from a distant past. Schlichtmann's expert geological witness is John Dobrinski. He and a team had mapped all Beatrice and Grace property, drilling test wells, studying the underlying bedrock and collecting samples of contaminated soil. On Beatrice's land, he had found debris and rusted drums, and testing had shown TCE contamination. Finding old bottles and carbon-dating a stunted tree, Dobrinski concluded that TCE contamination had been in the soil for at least twenty-five years. During his testimony, Facher interrupts with frequent objections, twenty-two in just one day. The cross-examination of Dobrinski, moreover, consumes an entire week, with Facher attempting to punch holes in every piece of Dobrinski's evidence. As well, Facher has found a discrepancy in Dobrinski's resume, which he uses in an attempt to discredit the entire testimony of the witness. Dobrinski is a "virgin" witness, never having testified in civil litigation, and is clearly flustered by Facher's continual pounding. In the end, Dobrinski does not cause the impact which Schlichtmann had hoped.

Facher's star witness is John Riley, who has managed the Beatrice plant for years. He has been well prepared by Facher, stating that, under no circumstances, and under no conditions, did the tannery ever dump waste on Beatrice-owned land. He denied ever seeing a representative from the state health agency or receiving a directive to remove the sludge and contamination from the land. Under cross-examination, he does not budge, even when shown photographs of the years in question, depicting waste barrels clearly present, and 1956 documents from a state health agent ordering Riley to remove the "sludge" from Riley Tannery land and Riley's subsequent refusal to do so. Riley's continual denials and Schlichtmann's continued pressure promote one objection after another from Facher and an admonishment from Skinner. Clearly, Schlichtmann loses his footing and his flow, and, at one point, cannot simply figure out how to phrase a question that will not violate the rules of evidence. Other witnesses for the defense



included a city engineer who testified that water from Wells G and H was fine (he dies of leukemia before the trial ends) and a chemist, who had a questionable method of time-dating the TCE contamination. Even though Schlichtmann suspects the chemist's theory, he does not know enough to refute it.

The case against Grace Chemical is stronger. Here, Schlichtmann had former employees who had poured sludge and TCE out onto the ground. In all, six witnesses were paraded in a single day, all of whom admitted to using hefty amounts of TCE and dumping the waste into the ground outside the plant. Even those witnesses who were "hostile" and who had been prepared by Grace, were ultimately implicated in the dumping. Keating's defense includes placing the blame on other chemical plants in the area and the testimony of a geologist, who claims that the soil around Grace is so compacted, it would have taken ten years or more for TCE to have reached the wells. Nesson immediately suspects that the geologist's claims are not correct and disappears for two days in an attempt to figure it out. In the end, he discovers that the simple algebra of the geologist's theory will not work, and Schlichtmann, using the geologist's own figures, manages to discredit all of testimony. Schlichtmann is elated with the case he has built against Grace, and well he should be.

Judge Skinner takes a few days to consider defense motions and ponder jury instructions. In a blow to Schlichtmann's case, he disallows any evidence or testimony about Beatrice Foods prior to 1968, thus eliminating the bulk of the plaintiff's evidence, as well as the death's of three children, Anne Anderson's included. Further, he frames four questions for the jury to deliberate, questions which are so complex that jurors will have a difficult time answering them in total. In the questions, the jurors are asked to determine the exact years in which the contamination actually began. Schlichtmann is furious and insists that Skinner is deliberately sabotaging his case because he irritated the judge during trial. As well, Schlichtmann and Nesson realize that their biggest mistake was ever allowing the trial to be separated into phases. Without the human element of devastated families, the case is based upon arguments of scientists and credibility of witnesses. As Schlichtmann plans his summation, he knows that he must "spoon feed" the answers to the complex questions to the jury. His attempts to do so, however, are flawed by lack of sleep and the constant objections of Facher (rarely done during a summation, but allowed by Skinner).

As the jury goes into deliberation, Gordon is attempting to hold the firm's precarious financial position at bay. His latest strategy is to continue to apply for new credit cards with any balance possible, paying only those creditors who have begun legal actions, and neither Schlichtmann's Porsche payment nor its insurance has been paid in months. The Bank of Boston, having received no payments on the almost one million dollar loan, is ready to take the homes to which it holds the deeds. Gordon, a "miracle worker" and a gifted persuader, convinces "Uncle Pete," their personal loan officer at the bank, to hold off and to give them just a bit more time.

During the first week of deliberations, Schlichtmann holds vigil in the corridor of the federal court building all day. He is convinced that Riley lied on the stand and can only hope that the jurors see through the cover-up. Two jurors, in fact, agree with him, but a



unanimous verdict cannot be reached. Despite their messages to Skinner about the deadlock, he instructs them to continue on at least one more day. Eight days after summation, the Monday morning after Schlichtmann's car is repossessed, the jury reaches its verdict, finding Beatrice not guilty and moving forward only with the suit against Grace Chemical. There are issues with the verdict, however. The jury has been unable to specify dates of contamination, as required by the questions, and this could eventually be disastrous for the plaintiff's case. Schlichtmann is devastated by the verdict, believing that he has let his clients down and failed to devise correct trial strategies. Further, he has allowed himself to be out-maneuvered and intimidated by Facher, for whom he clearly was not a match. "The case that he had tried to turn into an environmental crusade, the case that he had hoped would bring him fame and fortune, had suddenly turned back into an ordinary case again" (p. 400). The only option now appears to reach a settlement with Grace.





# The Negotiation

## The Negotiation Summary and Analysis

Schlichtmann's team retires to its offices to assess the situation. While many are advising Schlichtmann to consider the verdict a victory, he cannot. The discussion involve two options: 1) he can go forward with phase 2 - the medical phase, but three leukemia deaths will be out because they occurred earlier than the year Skinner insists must be used for trial. Further, the jurors appear to be divided, and their financial conditions are severe. 2) He can negotiate with Grace but prepare for a trial consecutively. He concludes that Keating and Cheeseman probably want to settle. Grace has settled other similar suits and certainly does not want the jury to hear about dead and dying children.

Schlichtmann contacts Keating to arrange a meeting but wants Grace executives present during the negotiations. He is invited to New York to meet with Albert Eustis, Grace Vice-President and General Counsel. The team decides to ask for thirty-five million, some of which will go to a leukemia research foundation, but to settle for twenty-five million. The "squeal number," or the lowest absolute amount to be taken is set at ten million, although Jan is livid about it. During his first meeting with Eustis, negotiations seem to go fairly well. While Eustis is a cold "nuts and bolts" person, he likes the idea of a foundation and indicates that he will take Schlichtmann's offer to the Board of Directors when it meets the following week. Schlichtmann, Conway, Gordon and Phillips return to New York the following week with a devastating result. Eustis is cold, angry, and offers six million, six hundred thousand in settlement funds. He adds, "If you'd settled then (before all of the publicity), you'd be rich men. Now you can recover your costs and you'll be famous" (p. 414) The return to Boston is not pleasant, but Schlichtmann is not ready to give up the goal of a settlement.

Two days later, Keating is able to relate to Schlichtmann the concerns of Eustis. If Grace pays a large settlement now, they will look terribly guilty. As well, there is the "shark" effect, that is, the encouragement of other lawyers to come after Grace as well. In this revelation, Schlichtmann sees an opportunity. It is not money that worries Eustis, and this gives him a new negotiating position. He will ask Skinner to set aside the guilty verdict against Grace; the families would go to the press and accuse Beatrice and other companies of the contamination, and Grace will pay big. He gets no response from Keating or Eustis.

Before phase two begins, the attorneys are called before Skinner. The problem with the phase one verdict is the lack of dates included in the jury's final determination. Keating insists upon a new trial; Schlichtmann responds with a resounding no, and negotiations continue. The plaintiff position is clearly waning, as financial matters reach a critical state and as Eustis plays a waiting game for things to get worse, as registered letters from creditors, now taking legal action, continue to arrive at the office. Skinner encourages additional negotiations, and the parties continue to talk. As the firm's



financial situation becomes dire, and Schlichtmann, Conway and Crowley are about to lose their homes to bank, Schlichtmann meets with the families to discuss the situation, particularly the point that, if the trial goes to phase two, three families are likely to be eliminated from any verdict. The families insist that they will remain as one, that Schlichtmann should continue to negotiate, but that they do not want Grace to be vindicated by a set-aside verdict.

At 5:00 p.m. on a Friday night, with an impending meeting with Judge Skinner on Monday, Al Eustis calls with a final offer. Schlichtmann listens and promises to call back soon. Eustis has offered eight million dollars but indicates that the "cash register" is empty at that figure. Amidst clamors to accept it and be finished, Schlichtmann is still considering the possibility that there may be more money. As well, Grace wants the verdict vacated, and Jan knows this will be a problem for the families. Ultimately, the forces of reason win out, and Schlichtmann telephones Eustis to accept. Perhaps, thought the others, the ordeal was finally over. In Schlichtmann's mind, however, there was still the potential of an appeal against Beatrice. For him, the ordeal could be prolonged.



# Blind Man's Bluff

## Blind Man's Bluff Summary and Analysis

Not everyone in Woburn is happy with the settlement. First, there was the issue of a vacated verdict; many, including Reverend Young, believed that Grace was probably holding a celebration about it and that corporate America had been taught nothing. In Young's mind, "...Schlichtmann had botched the first part of the trial - the easy part - and then he'd sold out when things began to look risky." (p. 452) Some of the families felt that Schlichtmann's cut of the pie is too much. Realizing that they had all signed an agreement giving him a specific percentage of the compensation and damages, they protest instead the expenses being charged to the settlement funds. They hire an attorney and an accountant to review all expense charges, and Schlichtmann eventually agrees to return eighty thousand.

The vultures circle quickly. Mulligan wants his referral fee; Roisman wants his cut for early assistance in the case; the bank demands immediate repayment, and creditors everywhere swoop in for their due. After debt payoff and bonuses to all office staff members, Jan Schlichtmann is left with his condo and thirty thousand dollars. Debt free and exhausted, he leaves for a month-long vacation in Hawaii, while Charlie Nesson begins to prepare an appeal of the Beatrice verdict. During the initial preparation, the EPA issues a report on pump tests performed a year ago, before the trial had even begun. Conclusions of the report state that, without doubt, both Grace Chemical and Beatrice Foods had contaminated Wells G and H, and that Beatrice contamination was by far the worst. Nesson is ecstatic, and Schlichtmann returns to jump into the appeal, and other cases, with renewed energy.

Unfortunately, firm finances deteriorate once again. Schlichtmann has lost a major medical malpractice suit and the Beatrice appeal is becoming costly. The worst situation, however, is with the IRS. From the settlement money received by the firm, Gordon had forgotten to set aside money for taxes, and Uncle Sam wants his money. Schlichtmann's personal finances are a wreck as well, resulting in termination of his home telephone service and the repossession of his furniture. He now sleeps on chair cushions spread upon the floor.

The appeal of the Beatrice verdict is filed, amid a flurry of new evidence. In addition to the EPA report, other documents are uncovered, held in the local EPA office, which prove that Beatrice property had been contaminated as late as 1983 and that Beatrice's own top secret monitoring of wells had shown that groundwater went through very porous soil toward the wells. These documents confirmed all that Schlichtmann's experts had contended. The Court of Appeals rebukes Skinner for not following through on plaintiff requests to question Facher and Mary Ryan (Riley's personal attorney) about the newly-discovered EPA report but sends the case back to Skinner for further "aggressive inquiry." Skinner announces that he will hold a very short hearing and then give his ruling. Meanwhile, Schlichtmann finds a well driller, Larry Knox, who signs an



affidavit that he had been hired to drill the test wells on Beatrice property. He observed trucks carting off a "black sludge." Another plant engineer, who also witnessed the waste removal, implicates Riley, stating it was Riley who directed the removal before the EPA was to arrive.

Faced with new proof of misconduct and the withholding and destruction of critical evidence, Skinner orders full discovery and depositions from the witnesses, which Schlichtmann and Nesson manage to get. The discovery includes, ultimately, twenty-six witnesses and two hundred thirty-six exhibits. Beatrice quickly offers one hundred thousand for each family but is rejected, so sure is Jan of victory this time around. Skinner's ruling is a conviction of Riley for perjury, a determination of deliberate misconduct on the part of Mary Ryan for withholding evidence, but exoneration for Facher, who insists throughout that he had no knowledge of the "cover-up." In a final bit of irony, Skinner finds against Schlichtmann on Rule 11 but imposes no punishment.

Schlichtmann has lost his condominium and files for bankruptcy, with debts totaling over one million dollars, most of which is owed to the IRS. He is living in the office, unable to become interested in any new cases. With Crowley, he arranges for a garbage truck to cart off all of the Woburn trial documents from a rented storage unit, and thus the nightmare ends. "All this paper...It represents nine years of my life. Why did I do it?...Pride, greed, ambition. Getting rich by doing good...I'm 39 years old and I've dug one fucking big hole. A man couldn't dig a bigger hole." (p. 491) Jan borrows money for a round-trip ticket and spending money and leaves for Hawaii. Alone and camping on the beach, unsure about his future in law, Schlichtmann at least makes the decision not to end his life.



# Characters

## Jan Schlichtmann

Jan Schlichtmann is a flamboyant, somewhat egotistical, personal injury lawyer, who grew up in a small working-class community in Massachusetts, not particularly enamored with the legal profession. In fact, when his father suggested this as a potential profession for him, Schlichtmann responded that a lawyer was little different from a plumber, both being hired to "fix" things in people's lives, whether these were wills and divorces or leaky pipes and faucets. He majored in philosophy and sold life insurance to graduate students upon graduation. His interest in the law began as he watched the Watergate Trials, when he began to see the law as a vehicle to help people and the public. By the time he entered Cornell Law School, he was already working in the field, as the Executive Director of the Rhode Island ACLU. Practicing as a small town "country" lawyer, Schlichtmann won a big personal injury case, which catapulted him into a new phase of life. He worked as a "contract attorney" for a Boston law firm, Reed and Mulligan. Schlichtmann eventually took two partners and formed his own firm.

The Woburn case, involving a childhood leukemia cluster in a small town just north of Boston, was an "orphan," a case which had first been brought to Reed and Mulligan but which, in their eyes, was not worthy of their attention. Schlichtmann took the case to his private practice, intrigued by the possibilities. Schlichtmann's character and personality are clearly revealed as he moves through preparation, trial, and appeal. He demonstrates certain characteristics of an obsessive-compulsive personality, insisting upon impeccable dress in hand-made suits and shirts and hugely expensive shoes and ties, a regimen of strict dietary rules, and "throwing" himself into his work on each case, ignoring social life, family, and, certainly, the basic responsibilities of money management. Schlichtmann is a big spender, sparing no expense when he needs to impress opposing counsel or employ the services of experts. He borrows quickly and freely when his lavish personal and professional lifestyles demand. He is often unwilling to listen to the voices of caution and reason, so consumed is he with his own vision of the way things ought to be. The Woburn case became both Schlichtmann's reason to celebrate and his albatross, resulting in certain fame, but also financial ruin and a painful lesson in the realities of "playing with the big boys" in the legal system. Even though he contemplates suicide, his personality does not truly lend itself to that action, and the reader is left with the belief that he will move forward.

## Jerome Facher

Jerome Facher is the chairman of the litigation department of Hale and Dorr, a prestigious law firm in Boston. A physically unimposing figure, Facher is now sixty and, in addition to his position with Hale and Dorr, has taught a course at Harvard Law School for many years. As a trial lawyer, he is quite successful and shares many of the same personality characteristics as Jan Schlichtmann. Living alone, he works long



hours, becomes obsessed with cases upon which he is working, and considers himself a superior litigator. Unlike Schlichtmann, however, he does not engage in a flamboyant and lavish lifestyle. His clothes are ordinary; he has used the same briefcases for years, repairing them with coat hanger and tape when necessary, and places food from buffets and luncheons into baggies for later consumption. In short, he is frugal - almost to a fault. Facher's firm represents a number of large corporations, one of which is Beatrice Foods, producer of hundreds of items found in any grocery store. When Beatrice is named as a defendant in the Woburn case, Facher leads the defense team. A seasoned litigator, Facher begins with a barrage of motions, the respect of Judge Skinner, and specific plans to delay and thwart Schlichtmann's efforts and deplete his financial resources. When these efforts fail to bring about the desired effect, Facher exhibits the trial behaviors he has practiced and taught for years, specifically, to obstruct the flow of the plaintiff's arguments with frequent objections and to discredit plaintiff witnesses in any way possible. Further, he is able to "push" the right buttons to frustrate and anger Schlichtmann, often disrupting Schlichtmann's focus and argumentative flow. With a finding in favor of Beatrice, Facher has won; however, when additional evidence is produced showing that Facher's witnesses have lied and/or withheld evidence which clearly demonstrates Beatrice's participation in water contamination, Schlichtmann feels somewhat vindicated, albeit defeated in his appeals attempts. The trial takes its toll on Facher, as well, and he emerges visibly weary and tired.

## William Cheeseman

Cheeseman is a senior partner with another Boston law firm, Foley, Hoag and Eliot, and he has consistently represented W. R. Grace in a variety of lawsuits, most of which have related to environmental pollution. Unlike Facher, he takes the filing against Grace far more seriously, if only because of the publicity related to the deaths of children. Cheeseman's strategy is to stop the suit before it gains any momentum, as he does not have a lot of trial experience. Cheeseman was, in fact, more of an intellectual, having studied mathematical physics as an undergraduate. He is a bit of a loner, not participating in office politics or social functions, and is not prone to become obsessed with cases before him. He uses his logic and intellect, rather, to reach settlements or, failing that, to use pre-trial maneuvers to prevent any trial at all. In this case, such pre-trial maneuvers included successfully moving the suit from state to federal jurisdiction because federal court judges have a lower opinion of personal injury plaintiffs. He then files motions to dismiss based upon Rule 11 and barratry, charging Schlichtmann with filing a frivolous lawsuit and soliciting clients for the purpose of a frivolous lawsuit. These actions fail as well. Perhaps Cheeseman's biggest mistake is to file a motion to include another chemical company, Unifirst, in the suit, claiming that Unifirst could just as easily have contaminated the water. When Unifirst decides to quickly settle, Schlichtmann is given the money necessary to pursue the case against Grace and Beatrice. Cheeseman's lack of trial experience is a factor in a negative verdict, and only when Grace executives become involved in the negotiations is Schlichtmann finally forced to agree to settlement.



## John J. Riley

John Riley is the operations manager of Riley Tannery, a subsidiary of Beatrice Foods, which is accused of contaminating Woburn Wells G and H with TCE. The Riley family once owned the tannery, but, when government officials demand that a water treatment facility be built, the tannery is sold to Beatrice. Riley is an angry, confrontational individual who, during a deposition at Schlichtmann's office, pours a glass of water on an expensive conference table. He insists that his plant never, at any time, dumped any waste materials, despite the aerial photographs indicating otherwise. Eventually, Riley is caught in his perjury, and Schlichtmann uses the new evidence in an attempt to appeal the initial trial verdict. Even though Schlichtmann is unsuccessful, the evidence is now public, Riley is completely discredited and will be charged with perjury.

## Tom Barbas

Tom Barbas has worked in the paint shop at Grace Chemical and testifies that he, as well as many others, used TCE on a regular basis, accumulating a gallon or two of waste everyday. As late as the 1970's, he was told by supervisors to dump the waste in a gully near the back door of the plant. The testimony of Barbas, as well as other Grace employees, is key in the initial verdict against Grace.

## James Gordon

James is a personal friend of Schlichtmann as well as his chief financial adviser and "number cruncher." Out of loyalty to Schlichtmann, and believing that the Woburn case has the potential to be a "rainmaker," Gordon engages in a great deal of creative accounting, bill paying, and negotiating loans with the Bank of Boston, in order to keep Schlichtmann and his firm alive through the course of the litigation. With his back to the wall, however, the Grace settlement comes just in time, allowing him to pay creditors and the bank, salvaging the partners' homes and partnership itself. He is unable to curb Schlichtmann's personal spending, however, and Schlichtmann eventually must declare bankruptcy.

## Charles Nesson

Nesson is a Harvard law professor who eventually joins the Schlichtmann team in the Woburn case. Charlie is a bright, creative individual who sees this case as a landmark one against corporations which pollute with impunity. He encourages Schlichtmann's aggressiveness against the defendants and, in one instance, is able to determine the fallacy of mathematical calculations of an expert witness for the defense.





## **Anne Anderson**

Housewife in East Woburn, Massachusetts whose son is diagnosed with leukemia and who launches the campaign to publicize the childhood leukemia cluster in her neighborhood. She is tenacious and unyielding in her conviction that the well water was contaminated by Grace Chemical and Beatrice Foods subsidiary, Riley Tannery.

## **Donna Robbins**

A resident of East Woburn, Massachusetts whose son dies of leukemia and who is a strong participant in the case against Grace and Beatrice.

## **Reverend Bruce Young**

Pastor of the Trinity Episcopal Church in Woburn, Massachusetts who supports the movement to launch civil action against Grace and Beatrice.

## **Kevin Conway**

A partner in Schlichtmann's firm who demonstrates his loyalty to Schlichtmann by putting up his home as collateral against loans with the Bank of Boston. He is less obsessed with the Woburn case and counsels Schlichtmann to take early settlement offers and close the case.

## **Bill Crowley**

A partner in Schlichtmann's firm who also puts up his home as collateral against loans to pursue the Woburn case.

## **Rikki Klieman**

Fellow lawyer and friend to Schlichtmann. She would like their relationship to blossom but realizes that Schlichtmann is so consumed with Woburn he is unable to engage in any social or romantic endeavors.

## **Teresa Padro**

An occasional love interest of Schlichtmann's who is unable to sustain the relationship when he becomes engrossed in the Woburn case.

## **Mary Riley**

Personal attorney of John J. Riley. She ultimately admits that she had documents in her possession which would have seriously implicated Beatrice in the well contamination. She is cited for misconduct by Judge Skinner.



# Objects/Places

## Woburn, Massachusetts

Small town 40 miles north of Boston and site of childhood leukemia cluster which results in a lawsuit against two multi-national corporations for poisoning resident drinking water.

## EPA

Environmental Protection Agency, a federal agency charged with investigating all forms of pollution and devising regulations and guidelines regarding toxins and pollutants.

## Rule 11

A judicial regulation which impose severe fines for those who bring frivolous lawsuits before a federal court.

## barratry

The open solicitation of clients for a lawsuit, the ethics of which is still a matter of legal discussion.

## Wells G and H

Two wells which provided water to East Woburn and which were contaminated with a number of toxins, including TCE, a suspected carcinogen.

## Trinity Episcopal Church

The small church of Reverend Bruce Young and site of many family meetings during the lawsuit against Grace Chemical and Beatrice Foods.

## J.J. Riley Tannery

The only tannery left in Woburn and now owned by Beatrice Foods.



## **W.R. Grace Chemical Company**

A multi-national chemical corporation which has a subsidiary in Woburn. It is accused of dumping wastes, specifically TCE, which contaminated the drinking water of East Woburn residents.

## **T-cells**

Differentiated white blood cells which perform a variety of functions relative to fighting disease. Their general purpose is to identify and destroy foreign organisms in the body, primarily viruses, bacteria, and cancers.

## **TCE**

Abbreviation for tetrachloroethylene, used by both Grace Chemical and Beatrice Foods and considered to be the primary carcinogen which caused cancer in Woburn.

## **Aberjona River**

River flowing by Woburn, providing transport for industry but also the site of additional contamination from industrial waste.

## **Reed and Mulligan**

Prestigious law firm in Boston where Schlichtmann worked and first learned of the Woburn suit.

## **Orphan**

Potential personal injury lawsuits which have merit but which no firm has yet taken.

## **Dog**

Personal injury cases which have no merit and should not be taken

## **Unifirst**

Another chemical plant in North Woburn which admits to using and spilling TCE and which settles with Schlichtmann early on for slightly more than one million dollars.



# Themes

## Truth vs. Judicial Process

Truth and the judicial process can often be quite incompatible, and this was certainly evident in the saga of the Woburn case. The adversarial nature of a plaintiff and a defendant, by definition, creates a climate in which each litigant's legal counsel must out-manuever his opponent, and, often, the verdict is a result of the success of trial tactics rather than the facts of the case. Jerome Facher is an expert in this regard. Realizing that the victims will arouse great sympathy from jurors, he successfully persuades Judge Skinner to divide the trial into phases. If he can achieve victory during phase one, the jurors will never hear from the victims. He is also a masterful and experienced trial litigator who easily disrupts the flow of Schlichtmann's case through continual objections, even during the summation, and effectively discredits plaintiff experts on minor issues, thus causing doubt in their credibility on the important points. It appears, as well, that he has Judge Skinner's cooperation, when, on appeal, Schlichtmann is unable to achieve a new trial, despite the truth of withheld evidence and the perjury of a key defense witness. Though not as effective as Facher, Cheeseman is, however, able to successfully move the case from state to federal jurisdiction, because federal courts typically see personal injury litigations in a less favorable light. As well, Judge Skinner jeopardizes a great deal of Schlichtmann's case by refusing to allow illnesses and deaths prior to 1973 to be a factor in the proceedings. Judicial process, in these instances, seems to relegate truth to a position of lower priority.

## Corporate Irresponsibility

The behavior of large corporations has been criticized since the beginnings of the industrial revolution. Low wages, long hours, deplorable working conditions and child labor were the norm throughout the late eighteenth and early nineteenth centuries. Eventually, it took progressive reformers and government intervention to put a stop to this exploitation, as corporations were not willing to "clean up their acts" themselves. The contemporary equivalent of corporate irresponsibility appears to encompass a number of activities, and one of these is often the utter disregard for public health and safety as it pursues profits. Thus, air is polluted, food, drugs, and toys are produced in unhealthy and dangerous ways, and, as in the case of Woburn, drinking (and bathing) water is contaminated by a carcinogen. The corporate response to initial governmental efforts to determine the extent of contamination and to require clean-up is to "hide" the evidence, to claim innocence, and then to settle for as little as possible, usually without the public admission of guilt. The Woburn case, while not the landmark litigation envisioned by Schlichtmann, certainly gained nationwide publicity and assisted in the increased focus of the public and the government on the identification and regulation of dangerous corporate practices.



## Money and the Law

It is no secret that the wealthy in American society, when they face legal troubles, are able to purchase the services of the very best attorneys. Such attorneys are usually graduates of superior law schools, have practiced law for many years and are known for their great legal successes and courtroom maneuvers. The middle class, and certainly the poor, must settle for less able representation for most legal issues. The exception to this general rule is a case which promises to receive national attention, whether criminal or civil. In these instances, the litigants or defendants will be deluged with offers from prominent or prominent wannabe attorneys who see fame on the horizon. In the Woburn situation, the advent of the case was a bit different. Two of the injured families take their case to a high profile law firm which basically ignores it, not because it lacks worth, but because winning it is tenable at best. Jan Schlichtmann is not a high profile lawyer when he chooses to take the case. He has the funds from one victory to invest in his new quest and relies as well on funding from a nonprofit legal organization, funding which does not ultimately materialize. Strapped for cash and forced to borrow huge amounts to prepare his case, Schlichtmann is still no match for the funds that Grace Chemical and Beatrice Foods have. These corporations know they can eventually run him out of money. In the end, Schlichtmann is broke and must quickly settle in order to pay his debt and award some amount to each of the injured families.

# Style

## Perspective

Jonathan Harr's decision to chronicle the Woburn case came about because of a friend's suggestion. As a writer and university instructor of non-fiction writing, Harr was looking for a book topic at the time and, as a resident of Massachusetts, had read news accounts of the coming trial. Because he was determined to give the most intimate perspective possible, he was able to obtain permission from Schlichtmann and his associates to attend every meeting, strategy session, deposition, and investigatory activity. In addition, he attended every minute of trial and post-trial negotiations, and was present for the entire four-year Beatrice appeals process. Given the depth of Harr's immersion into the inner-workings of one side of a litigation, the perspective can be seen as third person omniscient. He is obviously able, with ease and credibility, to relate not just actions and events but also the inner thoughts of the major plaintiff figures, which, as he clearly points out in the end notes of the work, were expressed to him personally. After the trial, moreover, he conducted lengthy interviews with both Facher and Cheeseman, even attending Facher's class at Harvard and sharing dinner with him afterward. He has thus been able to give the reader a relatively clear picture of the personalities and litigation strengths/weaknesses of these individuals as well.

## Tone

Upon completion of the work, one is struck not just by the detail and thoroughness of Harr's depiction of the Woburn case, but also his professional objectivity in presenting the events, the individuals involved, and the process of moving from trial preparation, to trial, to settlement negotiations, and to a long and arduous appeals attempt. Rather than interject any of his own biases or opinions, he allows the reader to hear exactly what an individual says and does without editorial comment. This was truly a commendable accomplishment, for it would be difficult for most to remain objective given the intimate setting of Harr's observations and evolving relationships with the defense team. When Schlichtmann screams about perceived biases of Judge Skinner, Harr reports the screams without comment. When new evidence is uncovered which clearly implicates Beatrice Foods and points to perjury and failure to disclose on the part of the Beatrice defense and witnesses, and this evidence is given no import by Judge Skinner, Schlichtmann reaches his final peak of frustration and anger. Again, this is reported without additional comment. Sometimes in objective reporting, however, certain biases can be injected by other means, specifically in the choices of content inclusion and the amount of space specific incidents and events receive relative to others. A case could certainly be made that more emphasis is placed upon the court's decisions that impact Schlichtmann negatively than those which hurt the defense case. While any reader could justifiably be angered by the conduct of Judge Skinner during the appeals process, that conduct is further emphasized by including the comments of another judge who stated he would have ruled quite differently. For the most part, however, this is as



objective an account as could be produced, leaving the reader to reflect on the judicial process and what truly drives trial conduct and verdicts.

## Structure

Jonathan Harr begins the book as Jan Schlichtmann is awaiting the verdict in the Woburn case and dealing with the repossession of his beloved Porsche. The flashback is introduced almost immediately, however, throwing the reader back to the 1960's when Woburn, Massachusetts opened up two new wells in order to provide water more efficiently to the residents of East Woburn. The story of Woburn stops so that the reader can be given Jan Schlichtmann's background up to the point of his assumption of the Woburn case and filing the complaint just days before the statute of limitations is to expire. From this point forward, however, the work is entirely chronological, detailing the realities of trial preparation. Each piece of evidence is carefully built in a sequential fashion, to include medical tests of all plaintiff families, expert biochemists and geologists reports, investigation of the histories of each defendant's activities, sitting in on or taking depositions, preparing the trial strategies, entering and responding to motions, and, finally the trial and agony of the verdict. These chapters take the reader to where the novel began, but the story is not over. Settlement negotiations occur as the remaining defendant maneuvers to prevent phase two, and Schlichtmann attempts to remain afloat financially. The work could, indeed, have ended with the Grace settlement, but, almost as an anticlimactic sequel, author Harr chronicles the frustrating and unsuccessful ensuing appeals process against Beatrice. Schlichtmann is finally free of this case, failing to achieve the personal, professional, and altruistic goals with which he had begun. It is the end of Woburn, and one is left to wonder what Jan Schlichtmann will choose to do with the remainder of his life.

## Quotes

"But money was the least of Schlichtmann's worries. Oddly, for a man of lavish tastes, he didn't care that much about money. He was much more frightened of having staked too much of himself on this one case. He was afraid that if he lost it - if he'd been that wrong - he would lose something of far greater value than money. That in some mysterious way, all the confidence he had in himself, his ambition and his talent, would drain away. He had a vision of himself sitting on a park bench, his hand-tailored suits stuffed into his own green plastic trash bags." p. 6

"Facher wasn't laughing. Up until this motion, Facher had rather liked Cheeseman, although he thought Cheeseman had shown bad judgment with the Rule 11 motion, and poor execution when he'd let Schlichtmann outmaneuver him at that hearing. Rule 11 had been bad enough, thought Facher, but this impleader of Unifirst was a more serious blunder. Unifirst would create havoc in the courtroom. The company would never cooperate in a joint defense, not after being dragged into the case by Cheeseman. They'd start pointing fingers. In no time, all three companies would be fighting among themselves about who had contaminated the wells. Facher had spoken briefly with Cheeseman about this before, and he thought they had agreed that such tactics would only help Schlichtmann." p. 145

"Schlichtmann called the families together. On a Saturday morning at his office, they readily approved the Unifirst settlement, and they further agreed, at Schlichtmann's suggestion, to use the first cash payment to finance the Woburn case. This money was important. Schlichtmann and his partners had made a million dollars from the Carney case, but they'd already spent most of that. Everyone in the office, from Kathy Boyer down to the cleaning lady, had gotten a big bonus. Schlichtmann had renovated his apartment and bought the new Porsche, and Conway and Crowley had each bought large houses in the suburbs. But all of that was petty cash compared with the real expense facing the firm. The Woburn case, Schlichtmann knew, had begun in earnest." p. 146

"Being in trial, Schlichtmann once said, is like being submerged in deep water for weeks at a time. The world above becomes a faint echo. War, scandal, and natural disaster may occur, but none of it seems to matter. The details of the case occupy every waking hour and usually intrude into dreams as well. Existence becomes spartan. When you finally come to the surface to breathe normally again, the world seems altered in fundamental ways. Win or lose, you set about rediscovering pleasures only dimly remembered. Colors seem brighter, food tastes better, the weather is of compelling interest." (p. 129)

"Schlichtmann arrived at work at six-thirty every morning and usually did not leave for home until around midnight. If he was not in Woburn interviewing witnesses or checking up on his team of geologists, he was at the conference room table, amid piles of medical texts, documents from Grace and Beatrice, government reports, and depositions. From these protruded tattered strips of yellow paper, like entrails, marking



vital information. They bore Schlichtmann's nerally illegible scrawl. He, and he alone, seemed able to recall the precise location, volume and page number, of every piece of arcana related to the case. When, on occasion, a particular fact eluded him, he'd sit motionless, peering into space, a picture of industrious cogitation, until he summoned forth its location." (p. 198)

"The steadily mounting bills alarmed Conway, but they didn't surprise him. He had known that Schlichtmann would spend every cent the firm had on Woburn, and then borrow more. Three years ago, Conway had predicted that the case would become a "black hole." Now, eight months into discovery, that prediction seemed on the verge of coming true. The nerve-conduction studies, the cardiology tests, physical exams, lab reports, and toxicology data jammed the filing cabinets. The large copying machine outside the war room ran from dawn until dusk, churning out copies of the experts' reports and the families' medical records. Deposition transcripts and files and reports seemed to multiply overnight and spread like a living organism, like a fungus, covering the conference-room table and spilling onto the floor and into the reception area." (p. 209)

"From the beginning, Schlichtmann had always thought of Woburn as a twenty-million dollar case, and nothing had happened to change his mind. He and Gordon drew up a chart of verdict probabilities that ranged from zero - a complete loss - to forty million. Schlichtmann calculated that if the case went to a jury, he would stand a five per cent chance of losing everything, and an equally small chance of winning forty million or more. The highest probability, according to the chart, was a judgment for the plaintiffs of twenty-four million, or three million for each family." (p. 214)

"He had survived the Woodshed, but the entire episode left him unnerved. There was an enormous amount of work to do in the coming months, and he could not afford another misstep. He had an ominous feeling about the judge. It seemed to him that Skinner treated Facher with more respect and deference than he accorded him. Something the judge had said about Facher at the Rule 11 hearing, three years ago now, had stuck like a burr in Schlichtmann's memory. He recalled the judge saying, 'I can't let Mr. Facher's judgment be substituted for mine, although I ordinarily would give it great respect.'" (p. 231)

"Schlichtmann dreamed that his firm - he, Conway, and Crowley - had purchased a sailboat. the sailboat was frozen in a sea of ice, which became, in the peculiar way of dreams, a vast glacier. In his dream, Schlichtmann fell from the deck of the boat and careened down the glacier's icy surface. He could see looming before him a dark crevasse in the blue ice. An instant before he tumbled down into the crevasse, he awoke, the bedsheets knotted and wet with perspiration." (p. 304)

"In a trial, the events of a month ago can seem like ancient history. The judge's directed verdict rulings did not have an immediate impact, and for that reasons they quickly faded into the background. Schlichtmann had been too busy to worry about them. But now, just before final arguments, as the lawyers met again with the judge, the rulings became important. The judge said he would instruct the jury not to consider any exhibits



or evidence against Beatrice prior to 1968. The testimony of witnesses such as Walter Day, who had played on the Beatrice land as a boy and described it as Death Valley, was stricken from the case. 'I don't see how it's relevant,' the judge said." (p. 367)

"Schlichtmann wanted the jurors to understand the case as he did. The story of Woburn had been broken into fragments, first by the judge when he split the trial into phases, then by Facher and his relentless objections, and now finally by the questions. Schlichtmann would have to reassemble the pieces so that jurors could understand. He knew they wouldn't be able to figure out how to answer the questions. He'd have to tell them what answers to write down, the only answers that would keep the case alive." (p. 372)

"Schlichtmann knew that going on would be hard indeed. Losing Beatrice was bad enough. What made the verdict even worse, however, was the September 1973 date the jurors had given for Grace. Three of the Woburn children - Jimmy Anderson, Michael Zona, and Kevin Kane, Jr. - had gotten leukemia before that date. Were they out of the case now? Schlichtmann expected Keating to make a strong argument in September to exclude them. If Keating was successful, nearly half the case would have turned to dust. How would that affect the remaining claims? And how would it affect the families? Would they start fighting among themselves?" (p. 394)

"At that moment, this felt like a profound revelation to him. His grief at losing Beatrice had blinded him to everything but his own pain, but now he was beginning to see again. Faced with this jury, he did not have many choices. He would have to try to settle with Grace. Maybe he could get enough money to call it a victory. That, he decided, was his challenge now." (p. 400)

"The case against W. R. Grace officially ended as it had begun - in front of a crowd in Judge Skinner's courtroom. The judge informed the jurors of the settlement and thanked them for their service. A moment later reporters surrounded Schlichtmann and Keating, seeking details of the settlement. Keating had insisted, as another condition of settlement, that the amount paid by Grace be kept secret, and Schlichtmann had consented to this. But many people, including of course the families themselves, knew the sum, and by evening the network news programs would be citing a 'reported' eight million dollar settlement." (p. 452)

"By these lights, the Woburn jury had made a mistake. Groundwater from Beatrice's fifteen acres had gotten under the river and had contaminated the wells, as Schlichtmann's expert had claimed. Given the proximity of the fifteen acres to the wells - a mere three hundred feet - this should have been obvious even without the EPA report. On the face of it, the verdict appeared to stand as an example of how the adversary process and the rules and rituals of the courtroom can obscure reality. But in Schlichtmann's view, it was the judge who had led the jury astray." (p. 456)

"He lived in the office but he didn't work on new cases, not with anything like real interest. Crowley settled a big case on his own. When the office got another case involving a cerebral aneurysm, one much like the case Schlichtmann had lost just after



Woburn, Schlichtmann didn't want to work on it. He gave it to Kiley, who took it to trial and won a huge verdict - \$10.3 million, more even than the Grace settlement, and Kiley had spent only a few months on this case. Kiley offered Schlichtmann a job working with him, but Schlichtmann turned the offer down. Schlichtmann spoke often of not practicing law anymore." (p. 488)

"Schlichtmann filed for bankruptcy. He had hoped to pay off his debts, but in the end he could not. He found himself unable to work on cases anymore. He decided to quit the practice of law and go to Hawaii. In the Chapter 7 papers filed in bankruptcy court in Boston, he listed his assets as fourteen dollars in his checking account, a fifty-dollar cassette radio, one hundred dollars in cash, and five hundred dollars' worth of clothes. (The expensive suits, after all, were no longer new). He owed his creditors \$1,231,542, of which state and federal taxes accounted for almost two thirds." (p. 491)



## Topics for Discussion

Does Schlichtmann eventually regret having taken the Woburn case? Support your opinion with specific events and/or quotes from the text.

Civil lawsuits do not require guilt beyond a reasonable doubt but, rather, guilt by preponderance of evidence. Do you agree with this concept? Why or why not?

Schlichtmann believes that Skinner is clearly prejudiced in favor of Beatrice Foods because of his deep respect and long-term relationship with Facher. What events appear to support Schlichtmann's belief?

A major issue of this story is the depth of corporate irresponsibility and the consequent danger to an unsuspecting public that trust local, state and federal officials to protect it. What role does government currently play in protecting its citizens from harm at the hands of greedy, unethical American and foreign corporations? What more can or should it do?

What motivates Schlichtmann to continue with this case against the advice of others, including his closest associates? Support your answer with references to his words and actions.

According to Skinner, what are the reasons for not ordering a new trial, even though there is compelling evidence against Beatrice Foods? Is this justice? Why or why not?

Schlichtmann and his partners categorize personal injury cases as "orphans" and "dogs." What is the criterion used to place cases in these categories? How does this categorization, used in some manner by all personal injury attorneys, skew the concept of justice?