

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Civil Action
No. 82-1672-S

SKINNER, D. J.

ANNE ANDERSON, ET AL

V.

W. R. GRACE & CO., ET AL

First Day of Trial

APPEARANCES:

Schlichtmann, Conway & Crowley (by Jan. Richard Schlichtmann, Esq., Kevin P. Conway, Esq., and William J. Crowley, III, Esq.) on behalf of the Plaintiffs.

Charles B. Nesson, Esquire, on behalf of the Plaintiffs.

Herlihy & O'Brien (by Thomas M. Kiley, Esq.) on behalf of the Plaintiffs.

Hale & Dorr (by Jerome P. Facher, Esq., Neil Jacobs, Esq., Donald B. Frederico, Esq., and Deborah P. Fawcett, Esq.) on behalf of Beatrice Foods.

Foley, Hoag & Eliot (by Michael B. Keating, Esq., Sandra Lynch, Esq., William Cheeseman, Esq., and Marc K. Temin, Esq.) on behalf of W. R. Grace & Co.

Courtroom No. 6
Federal Building
Boston, MA 02109
9:00 a.m., Monday
March 10, 1986

Marie L. Cloonan
Court Reporter
1690 U.S.P.O. & Courthouse
Boston, MA 02109

(The following is in the conference room.)

MR. KEATING: Good morning, your Honor.

THE COURT: Did counsel want to see me about something?

MR. KEATING: Yes, your Honor.

Two matters. One, I'm concerned about the 60 Minutes.

THE COURT: I'm going to ask them about everything.

MR. KEATING: You are going to ask them in the courtroom itself?

THE COURT: Why not?

MR. KEATING: I was wondering if it might intimidate them as far as owning up to them.

THE COURT: I am not going to have an individual voir dire on all of that.

MR. KEATING: But you will ask them if they have seen it?

THE COURT: I will ask them about the 60 Minutes.

MR. FACHER: Good morning, your Honor.

THE COURT: Good morning.

I will ask them about NOVA. I will ask them about the New Republic, but my guess is the number of New Republic readers on the jury is very small.

1 MR. SCHLICHTMANN: We have enough trouble
2 with the Globe and the Herald.

3 THE COURT: There was one disturbing thing.
4 The Globe -- Rather, the Herald, on Thursday, came out
5 with an article that said that the trial was starting
6 today, which had been initially scheduled, and we got some
7 calls from the jurors saying, "My God, we thought it was
8 Monday." So either they read the article, which they
9 shouldn't have done, or somebody said, "Hey, aren't you on
10 that jury; hadn't you better get the Hell over to the court-
11 house," which I think is the more likely event.

12 Anyway, I will inquire of them.

13 MS. LYNCH: Your Honor, Channel 4 and
14 Channel 7 carried extensive news broadcasts about the case
15 a week ago Friday. It was something akin to the 60 Minutes
16 program and WEEI, I'm told, has been carrying rather lengthy
17 segments about the case, also akin to the 60 Minutes program.

18 THE COURT: Okay.

19 MR. JCABOS: There was also a radio talk show
20 on WEEI where I think some of the parties were explaining
21 their views of the case.

22 THE COURT: Splendid.

23 MR. SCHLICHTMANN: Your Honor is aware of the
24 W. R. Grace press conference that was held last Friday?

25 THE COURT: The one that showed up on

1 60 Minutes?

2 MR. SCHLICHTMANN: Yes.

3 MR. FACHER: Part of the one that showed
4 up.

5 MR. KEATING: We wouldn't mind if they didn't
6 see that, your Honor.

7 MR. FACHER: Also, Mr. Nesson and I
8 were discussing his performance -- not performance,
9 interview. He was on this morning.

10 THE COURT: Mr. Nesson?

11 MR. FACHER: Yes. WBUR.

12 THE COURT: They didn't do it again, do it the
13 second time around.

14 MR. FACHER: 6:30 about.

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THE COURT: Well, let's hope it didn't

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catch many people at 6:30. I'm sure this is going to be

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a morning exercise we're going to have to go through. It's

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always true in these cases, so we'll do it the way we always

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have. Every morning I'll ask the jurors, "Did you see such

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and such," but I'm not going to take them in one by one.

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MR. KEATING: Your Honor, I had one

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other point unrelated to this point. I notice that the

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plaintiff apparently has some graphics that I don't know

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if you intend to use.

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MR. SCHLICHTMANN: Yes. I was going to

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bring that up to the Court.

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MR. KEATING: I would just like to

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know what they are before the opening.

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MR. SCHLICHTMANN: The two I wanted to

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use in the opening -- one is just a map of the City of

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Woburn with red dots where plaintiffs lived, and the other

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exhibit is based on the tax map of the City of Woburn. It

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shows the Grace property, the Beatrice property, and Wells

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G and H, and the Aberjona River. It's a locus map.

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MR. FACHER: We also have some graphics

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that will demonstrate the businesses that were upstream

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that were contributing to the pollution of the valley, the

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layout of the property, the sewer lines, the names of the

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chemicals, and a summary of the major points that the

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1 defendant is going to make.

2 THE COURT: All right. Well, that's
3 what I would expect.

4 MR. KEATING: The last item is merely
5 a procedural one, and that is that Mr. Facher will be
6 going first amongst the defendants and I will go last.

7 THE COURT: All right. As I understand
8 it, defendants want to make their openings immediately
9 following?

10 MR. KEATING: Yes.

11 THE COURT: I'm going to give them my
12 usual pretrial comments. I will go further than that,
13 though, I think, and give a brief outline of the plaintiffs'
14 claims and the defenses and point out how the case has
15 been broken down and point out that the liability of the
16 defendants is an independent matter and each defendant's
17 conduct has to be considered separately.

18 MR. KEATING: I take it you will not
19 be telling them the specific questions that they will be
20 asked?

21 THE COURT: No, I won't.

22 I'll be telling them the general subjects.
23 I think the specific questions clearly have to be refined
24 further than they have been, and we probably should wait
25 until we get much closer to the end of the process. My point

1 in offering those questions was just to give a framework
2 for splitting up the case.

3 I don't think I'll go much beyond that,
4 except to suggest that a lot of this will be expert
5 testimony, that they'll have to be very careful, and that
6 they have the right to assess it just like other testimony.
7 It's not magic. And that after they hear one expert, they
8 can reasonably expect to hear another expert who will tell
9 them the contrary, which seems to be the way experts are.

10 MR. SCHLICHTMANN: Not necessarily. A
11 lot of these experts agree with each other.

12 MR. FACHER: That's true.

13 Will you be touching, at least in a
14 general way, on what some of the issues are that they
15 should be keeping their eyes on?

16 THE COURT: Such as?

17 MR. FACHER: Such as the issue of
18 foreseeability.

19 THE COURT: Foreseeability, yes.

20 MR. FACHER: The issue of fault.

21 THE COURT: Well--

22 MR. FACHER: They're the same thing.

23 THE COURT: Not entirely. I'm describe
24 very summarily the three theories that the plaintiff is
25 going on and point out that at least as to two of them,

1 foreseeability is a factor. I think I will tell them that
2 the foreseeability is of a general sort. They don't have
3 to establish that it was foreseeable that the water would
4 go into the Anderson house and cause Jimmy Anderson to get
5 leukemia, if that's what the theory is. But foreseeability
6 of a reasonable likelihood of serious harm, substantial
7 likelihood of substantial harm, I think, is to be
8 considered.

9 MR. FACHER: I will be suggesting that
10 foreseeability at least of water contamination. I don't
11 think that's contrary to what you said.

12 THE COURT: I intend simply to alert
13 them. I don't intend to foreclose anybody's arguments or
14 anybody's presentation at this stage of the game. And if
15 I misspeak on any of these subjects, I certainly expect you
16 to let me know. I will give you an opportunity to correct
17 any damage that I do.

18 Incidentally, particularly with experts,
19 I have some propensity to ask questions myself when everybody
20 is done. You are entitled, as men of law, to object to
21 those questions, and I will take your objections seriously.
22 I would concede that an objection of that sort is perhaps
23 a little harder to win than the ordinary kind, but I have
24 been known to sustain an objection to my own questions.

25 MS. LYNCH: And promptly rephrase it.

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THE COURT: Well, rephrase it or

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abandon it. So don't be shy about that.

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I guess we're ready to start, aren't we?

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C/kr 1 MS. LYNCH: My memory is you did not actually
2 swear the jury. I simply wanted to remind you.

3 THE COURT: We did not swear the jury, and
4 that is the first order.

5 MR. FACHER: I have a little map of Woburn,
6 just showing Stoneham, Woburn, Burlington -- some of the
7 people didn't know where Woburn was -- which I would like to
8 give to each juror.

9 THE COURT: The place is pronounced Woburn.

10 MR. SCHLICHTMANN: You did raise ultimate
11 Juror McGrath, and the plaintiffs will file a formal
12 motion to excuse on cause. I know you asked for something
13 on Friday.

14 THE COURT: I got the information.

15 MR. KEATING: You got the letter, didn't you?

16 MR. SCHLICHTMANN: I didn't see a letter.

17 MR. KEATING: It was sent to your office,
18 I hope.

19 THE COURT: I got a letter on this fellow who
20 turns out to have been president of the Dewey & Almy group
21 and to be completely out of the picture, and all things
22 considered, I'm inclined to let Mr. McGrath stay.

23 If you want to, I will call Mr. McGrath
24 up and say, you know, "This is what your pal did. He
25 wasn't the president of the corporation." Does that make

1 a difference?

2 MR. KEATING: I don't think so. I think
3 our letter indicates the scope of his responsibilities, remem-
4 ber Mr. McGrath also knew someone, a Mr. Herlihey.

5 THE COURT: If Mr. McGrath thought he was
6 president of the whole company and not just a branch, it
7 might make him more sympathetic to W. R. Grace.

8 MR. KEATING: I don't mind Mr. McGrath
9 being fully informed about what his friend did, but I don't
10 like to single out Mr. McGrath for any particular dialogue
11 as a juror. I think it is kind of --

12 THE COURT: I am going to leave him on.

13 MR. SCHLICHTMANN: Yes. We want to file our
14 motion and only ask that the Court ask a few questions of
15 Mr. McGrath to make sure --

16 THE COURT: I don't know if I have the letter
17 in this bundle.

18 MR. SCHLICHTMANN: Here is a copy.

19 Just so you understand, your Honor, Dewey &
20 Almy was the company that founded the Grace plant in
21 Woburn. The people from Dewey & Almy founded the Grace
22 plant.

23 THE COURT: Yes, but that is long ago.

24 MS. LYNCH: That is not entirely accurate,
25 either.

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1 THE COURT: Well, Crvovac was a Dewey &
2 Almy product originally.

3 MS. LYNCH: Originally.

4 THE COURT: I remember that. As I said to
5 you, the firm I was working for as an associate represented
6 Dewey & Almy and continued to represent them locally when
7 it was acquired by Grace, and there was a fellow named Snow
8 who was general counsel, who was the son of Frederick Snow
9 for whom Gaston Snow is named, and he kind of ran the show
10 out there. And I can remember on one occasion he came in all
11 head up because they just invented Cryovac, and they were going
12 to wrap all the turkeys in the country with this stuff.

13 MR. KEATING: So they did.

14 MR. SCHLICHTMANN: They wrapped up a big
15 turkey, right in Woburn.

16 THE COURT: Off the record.

17 (Discussion off the record.)
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(In open court at 9:25 a. m.)

(Jury present.)

THE COURT: I think the first matter is to get the jurors in their proper places: Mr. Vogel, Ms. Kaplan, Mr. O'Rourke, Mr. Fox, Mrs. Coulsey, and Mrs. Clark. That's right.

Mrs. Gilbern, that's right. Ms. Faldetta, Mr. McGrath, Mrs. Cloutman, Mr. Jason and Mr. Chados.

Well, you did remember. I thought you told me that you didn't know where to go. You've got it perfect. Fine.

Now, as far as the people in the back are concerned, we're going to have to make some room in the front for the members of the press and the artists from the TV and so on, so I'm going to ask the marshal to take a minute to get you all properly organized. We can't have standees. Find as many seats as you can, and those of you who can't I am going to ask you to leave, and better luck another day.

See what we can do about getting some room for the press there. In happier days before the marshal service was cut back in its funding we used to have a marshal here to arrange all of this stuff at the outset, but now we have to straighten things out.

1 All right, please get settled as soon
2 as you can so that we can get started. Mr. Lyons, will
3 you swear the jurors, please.

4 THE CLERK: Yes, will each of the jurors
5 stand, please, and raise your right hand.

6 (Jurors sworn.)

7 THE COURT: Well, before we get started
8 I'm going to give you a little explanation of what the
9 procedure is likely to be here. The hours of court will
10 ordinarily be from nine to one. We have divided up the
11 case. It's a very long case. We'll take sections of it
12 at a time and you will be asked to decide certain questions
13 as we go along. I'll explain that in a minute. The
14 changes in scheduling will be as follows:

15 This Wednesday the schedule will be
16 9:30 to 1:30. Ordinarily it will be nine to one, but this
17 coming Wednesday, 9:30 to 1:30. There will be no court on
18 March 21st. There will be no court on April 21st and
19 April 22nd. If there are other changes we try to give you
20 an adequate notice so that you can make some good use of
21 the time that you have Friday. The case will begin with
22 the plaintiffs' presentation. The plaintiff has the burden
23 of proof in this case. The burden of proof is to
24 establish each element of their cases by a preponderance of
25 the evidence. I will talk about that a little bit this

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1 morning and more later on, but for the present purposes I
2 am mentioning it because it indicates why the case starts
3 with the plaintiffs' presentation, and the first thing
4 that will happen will be an opening statement by the
5 plaintiffs' lawyer, Mr. Schlichtmann. The purpose of
6 that opening statement is to give you an overview of what
7 this case is all about from the plaintiffs' point of view,
8 what the plaintiffs hope to prove.

9 Now, I've told Mr. Schlichtmann that
10 he may make an opening statement that covers the entire
11 case, not just the first stage of it that we'll be trying
12 at the outset but I assume that he will be concentrating
13 on the first part of the presentation.

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THE COURT: What the lawyers say is not evidence in the case. You must be careful to distinguish between what the lawyers say and what the evidence establishes. The opening statement is not evidence. The opening statement is an attempt by the attorney to outline the evidence for you, to give you an idea of what he hopes to prove. I use the simile of a person building a brick wall which has to be built one brick at a time, even as a case has to be put together one item of evidence at a time.

The opening statement is the attorney's attempt to show you the size and the shape of the wall he hopes to build, so that you will understand how each individual brick of evidence fits in.

Now, in this case, the defense lawyers have elected to make their opening statements following the opening statement of the plaintiff -- plaintiffs, rather. There are 33 plaintiffs here. Their opening statements, the defense opening statements serve the same function for the defense case as the plaintiffs' opening statement does for the plaintiffs' case. It is not evidence, and you must wait upon the presentation of evidence through testimony and exhibits.

When the opening statements are completed, then the plaintiffs will present their evidence in support

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1 of the issues which we're going to determine in the first
2 stage of the case. When they are through presenting their
3 evidence, then the defendants will have the opportunity to
4 present evidence on their behalf.

5 Now, there is a point or there is a
6 possibility, at least, in the course of the presentation of
7 evidence again for some confusion to be in people's minds
8 between what the witnesses say and what the lawyers say.
9 On cross-examination, the lawyers can ask leading questions.
10 The leading question may contain an implicit statement of
11 fact; for instance, "Isn't it true, Mr. Witness, that you
12 were at such and such a time at such and such a place?"
13 Well, if the witness says, "Yes, that's right, I was," then
14 the witness has adopted the lawyer's statement and it
15 becomes evidence which you can consider. But if the witness
16 says, "I don't know, I don't remember, I don't recall," or
17 "No, sir, that isn't so," then the witness has not adopted
18 the lawyer's statement, and you may not consider it at
19 that point unless it's maybe otherwise established later on.
20 But at least at that point, the lawyer's statement is
21 simply part of the question. And it is not the questions
22 that count; it's the answer.

23 You shouldn't allow yourself to speculate
24 that the lawyer may know something that we don't know. It
25 is very doubtful. There's nothing sinister about it. It's

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1 a perfectly sound way of extracting information. I'm just
2 calling it to your attention so that you will be alert.

3 When evidence is closed on both sides,
4 then the lawyers will have the opportunity to argue to you,
5 to persuade you. They are going to persuade you to a
6 particular view of the evidence and to ask you to draw
7 certain conclusions and inferences and conclusions from
8 the evidence which you have seen and heard.

9 Again, what they say is not evidence,
10 and it is your recollection and your evaluation of the
11 evidence which counts in the case.

12 When they are finished, you might well
13 think, well, the case is all over, but it's not because you
14 will have only one of the elements that go into your
15 verdict. Your verdict is based upon applying rules of law
16 to the facts which you decide have been established by a
17 preponderance of the evidence. So up to this point, you're
18 missing one of the critical elements; namely, the rules
19 of law that govern this case.

20 So you must keep your minds open and not
21 try to arrive at any conclusion about this case until the
22 rest of the case is offered to you.

23 I will then explain to you the rules of
24 law which govern the case and which govern the process by
25 which you arrive at a verdict, and then you will be excused

1 to commence your deliberations on the first stage of the
2 case.

3 It's very important that you keep your
4 minds open. It's very easy to get caught up in the early
5 stages of the case and to start forming an impression, but
6 you should keep your minds open until the very end of the
7 case or at least until the end of the first stage of the
8 case when certain issues will be submitted to you for your
9 decision.

10 As I indicated to you earlier, it is
11 extremely important that all of the specific information
12 about this case is offered to you in this courtroom subject
13 to the rules of cross-examination, subject to the rules
14 of evidence. The right of cross-examination is extremely
15 important in the trial of cases, and lawyers can't cross-
16 examine people who talk to you or newsmen or radio-TV
17 people on the outside.

18 So it is very important that you avoid
19 all contact.

20 Now, there has been quite a lot in the
21 public press and TV about this case. I'm going to ask
22 you now, probably an exercise that we'll go through quite
23 a few times in the case -- ask you if you have been exposed
24 to any of the following:

25 A segment of 60 Minutes on CBS a week

1 ago Sunday. Anybody watch that?

2 (Jurors shaking heads.)

3 THE COURT: A NOVA show on Public
4 Broadcasting that had to do specifically with this? An
5 article in the New Republic that dealt specifically with
6 this case? Anybody?

7 (No response.)

8 THE COURT: An article on Thursday,
9 last Thursday in the Boston Herald?

10 (No response.)

11 THE COURT: Now, I'm a little curious
12 about that, frankly, because that article said the case
13 was going to start on Thursday, and we got a fair number
14 of calls about that, which made me wonder if somebody had
15 read that article.

16 No. All right.

17 Channels 4 and 7 have had news
18 broadcasts about the case.

19 (No response.)

20 THE COURT: WEEI has had some radio talk,
21 I guess, about the case.

22 (No response.)

23 THE COURT: All right. The case in
24 general, as I described to you in the course of the voir
25 dire, has to do with an allegation by the plaintiffs that

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1 these defendants either dumped or permitted to be dumped
2 three or four toxic chemicals on their property; that these
3 chemicals migrated through the surface waters to an aquifer
4 supplying the municipals wells, from thence to the water
5 supply, and from thence to the plaintiffs, and that it
6 caused various diseases, including leukemia, resulting in
7 the death of some of the plaintiffs' children.

C/kr

1 The evidence will involve a great deal of
2 technical testimony, expert testimony. You must follow
3 that very carefully, but do not feel awed by it. You apply
4 the same common sense and good judgment to that kind of
5 testimony that you would apply to any other.

6 I am going to permit you to take notes
7 under certain restrictions because of the length of the
8 case. Don't get caught up, please, in the taking of notes.
9 It is more important that you watch and listen. If you want
10 to take a few notes to keep things straight, well and good.
11 When you come to deliberate, no great importance should be
12 given to notes as opposed to recollection. Some people are
13 helped by notes, some are not. Feel no obligation to take
14 notes, but in no case get so caught up in your note-taking
15 that you will be unable to pay attention to the witness.

16 When you listen to experts, as I say, pay
17 attention, but you also can reasonably expect that after
18 the first expert there will come the second expert who
19 will challenge the conclusions, in some respects, at least,
20 of the first one. Just keep your minds opened and see
21 what comes.

22 With respect to expert witnesses, I am going
23 to follow this practice I am about to describe:

24 At the end of the examination, after examina-
25 tion by the proponent, cross-examination by the opponents,

1 redirect, and recross and any questions I may ask, I will
2 permit the jurors to write out a question for the experts
3 and submit it to me. If it is a proper question that is
4 appropriate to be asked, I will pose it on behalf of the
5 jury.

6 Now, this is something of a departure from the
7 practice in this district. It is a practice that is followed
8 in some other federal courts. It is not generally followed
9 here. Where this case is likely to be so long and so loaded
10 with technical evidence, I have determined that that may be
11 a useful way of helping you understand what is going on.

12 The first part of the case will deal basically
13 with the conduct of the defendants. The plaintiffs are
14 offering three theories of liability, first that the
15 defendants were negligent, secondly, that they maintained a
16 nuisance, public nuisance, and third, that they were
17 engaged in an ultrahazardous activity which carries with
18 it liability for everything that goes wrong.

19 The first part of the case will deal with the
20 plaintiffs' evidence which tends to show or designed to show --
21 they intend to show, I guess, is a better way to put it --
22 that first the toxic materials were on the lands of the
23 defendants, that it migrated, that it got into the water
24 in sufficient quantity to constitute a potential hazard.

M-PF

1 THE COURT: Next is the failure to use
2 due care. So you should consider we're looking for
3 evidence either for or against the proposition that they
4 failed to use due care. The defendants of course will say
5 that they used due care. The plaintiffs of course will
6 say that they did not. An element in all of these -- well,
7 I will go forward. Public nuisance is just about what
8 you'd suppose. A public nuisance is a use of land in
9 such a way as to cause injury to the neighboring land and
10 to the people who are on it. Hazardous activity is self-
11 explanatory also. What constitutes it is not so easy.
12 It's very easy to talk about these concepts in a general
13 way, very difficult to apply them in a specific way. So
14 you should be watching for the evidence as to the flow of
15 water and all of that as to whether or not these chemicals
16 went from the defendants' land if they were ever there to
17 the wells in question.

18 One of the issues that you should have
19 in your mind as you listen to this evidence is the
20 foreseeability of harm. Plaintiffs must establish by a
21 preponderance of the evidence at least as to some of these
22 theories that it was reasonably foreseeable that their
23 conduct created a reasonable risk or a substantial risk
24 of serious injury to other people. Not specifically what
25 actually occurred, but of the same -- of the general order

1 of injury that did in fact occur in the case.

2 When the evidence on those issues is
3 presented -- I don't intend in this discussion to give
4 you a comprehensive outline of all that is to be presented.
5 That's what the lawyers are going to do later this morning
6 -- you will be asked to make a decision as to whether the
7 plaintiff has established all of these elements by a
8 preponderance of the evidence. If the answer is negative
9 that's the end of the case. If the answer is affirmative
10 then we'll go on to the next part of the case in which the
11 emphasis shifts from the defendant, what they did to the
12 plaintiffs and what happened to them.

13 Question of causation will then be of
14 issue, whether what happened to the plaintiffs was caused
15 by what you have determined was found in the water.

16 Now, again, the plaintiffs have the
17 burden of establishing causation by a preponderance of
18 the evidence, and we're going to break that part of the
19 case up into two sections because the evidence will be
20 different and will be quite complicated, as I understand
21 it, with respect to each part.

22 The second part of the case will deal
23 with those plaintiffs who claim to have incurred leukemia
24 as a result of the actions of the defendants, and then
25 the final aspect of the case will deal with those plaintiffs

1 who claim to have incurred damage to their immune systems
2 in perhaps even a more complicated presentation. For the
3 time being, however, you should be focusing on this first
4 stage of the case which has to do with what the defendants
5 did and did it violate any legal duties to the plaintiffs.
6 I don't mean that you should isolate that from the
7 consideration of the case as a whole, but that's going to
8 be the first order of business. We will not be taking
9 testimony today, so I will not provide you with notebooks.
10 I expect we may get to testimony before some time tomorrow
11 morning, and tomorrow morning you will each get a little
12 secretarial pad which you should identify with your own
13 name. It will be turned in every noontime at the close of
14 this session and we issue to you the next day.

15 Be very careful not to discuss this case
16 with anyone and not to let anyone discuss it with you. In
17 the course of moving about this building you will find
18 yourselves sharing cars and elevators with people involved
19 in this case. It's inevitable with the number of lawyers
20 and witnesses that will be involved. Do not talk to them
21 about anything. Somebody at some distance may see you in
22 conversation with a person involved in this case and draw
23 the incorrect inference, at least I would hope it was
24 incorrect, that there had been some improper communication.
25 This can cause a great deal of trouble in the future and

1 can lead to an impeachment of the verdict that you eventually
2 render. One good sound solid way of avoiding it is to
3 avoid talking to these people at all. You might be tempted
4 to complain about the elevator service or comment on the
5 weather. Just don't. Don't do it.

6 With respect to people on the outside,
7 I think it's perfectly clear that this is the kind of
8 subject that excites a lot of interest and on which there
9 are a great many people perfectly willing to be experts
10 without the benefit of the evidence or the argument or
11 the testimony in the case; and I have no doubt that there
12 are plenty of people in your own neighborhoods and perhaps
13 even in your families who will be very happy to tell you
14 just how to decide this case. Don't let them. Keep away
15 from them. If somebody starts to talk to you about the
16 case say as politely as you can but as firmly as you need
17 to, "You must not talk to me. The Judge has instructed
18 me that this is improper." I hope you will be able to
19 follow that through the many weeks that we will be meeting
20 together.

21 Now, at this point counsel can advise me.
22 I will take one from each group at the side bar to advise
23 me if I have made any errors or significant Omissions in
24 these instructions to you.
25

1 CONFERENCE AT THE BENCH AS FOLLOWS:

2 THE COURT: I'd like to avoid these mass
3 troop movements every time we have a bench conference.

4 MR. FACHER: I'd like to call your Honor's
5 attention to one of your statements on nuisance. I think
6 you said it's use of the land to cause injury to neighboring
7 land or people, and I think --

8 THE COURT: Is that not right?

9 MR. FACHER: It's not correct for public
10 nuisance. And you must find that there's an element of
11 negligence or intention involved, and there must be an
12 interference with the public right. Just using your land
13 in some way that bothers your neighbor is not the nuisance
14 that's involved in this case.

15 THE COURT: All right. I don't know that I
16 need to do that now, but I suppose I might as well.

17 MR. NESSON: Your Honor, in mentioning the
18 stages, you described the first two stages but you did not
19 describe the third stage, the last stage, of punitive
20 damages.

21 THE COURT: Oh, well, I think I'll leave you
22 to do that. I meant to separate out the stages of facts
23 that they had to worry about. I'll let you talk about that.

24 MR. NESSON: All right.

25 MR. KEATING: I have no comment, your Honor.

END OF CONFERENCE AT THE BENCH.

1 THE COURT: Counsel has pointed out to me
2 that I did not fully describe nuisance. I didn't fully
3 describe any of these things, but the nuisance that we're
4 talking about is a little broader than I've mentioned
5 and involves the interference with a public right. What
6 the plaintiffs are alleging is a public nuisance. It
7 involves some elements of negligence, perhaps, some elements
8 of foreseeability, and an interference with a public right.

9 Well, with that, I think that I've completed
10 my remarks and we'll now proceed with the plaintiffs' opening
11 statement.

12 Mr. Schlichtmann?

13 MR. SCHLICHTMANN: Thank you, your Honor.

14 Ladies and gentlemen of the jury, my brothers
15 and sisters at the bar, ladies and gentlemen of the Court:
16 There's a city north of Boston. The name of that city is
17 Woburn. Woburn is like many other cities. It has homes,
18 schools, churches, local government, industry. But Woburn
19 has something else. Woburn has more than its share of
20 sickness and death.

21 In May 1979, two of the wells in that city,
22 two of the wells that supplied drinking water to that
23 community were found to be contaminated. They were
24 contaminated with industrial waste, industrial waste that
25 had been dumped into the ground by corporations that didn't

1 care; industrial waste that was dumped into the ground by
2 corporations that didn't care about the community's health;
3 corporations that knew that what they were doing was
4 wrong; corporations that knew that what they were doing
5 could hurt people; but corporations that chose to do it
6 anyway.

7 I represent eight families from that
8 community, eight families who suffered because those
9 corporations didn't care, eight families whose lives were
10 touched with poison, poison in their drinking water, poison
11 that caused these families to suffer sickness and death,
12 poison that came from these corporations' property.

13 This trial is about how those corporations
14 polluted those wells and what happened to these families
15 because of it. This trial is about how that happened and
16 what now must be done about it.

17 My name is Jan Schlichtmann. My offices are
18 in Boston, and I'd like to introduce to you the people who
19 will be helping me present this case to you. This is
20 Kevin Conway, Charles Nesson, Tom Kiley, and my other
21 partner, Bill Crowley, who is over there. You'll be seeing
22 him shuffling back and forth during the trial with all sorts
23 of documents and exhibits.

24 The corporations that we intend to show
25 polluted these wells are the W. R. Grace Company and Beatrice

1 Foods Company. The W. R. Grace Company is represented by
2 the firm of Foley, Hoag & Eliot, and Mr. Keating and his
3 associates are seated here. They represent W. R. Grace.

4 And Hale & Dorr represents Beatrice Foods,
5 and Mr. Facher and his associates are seated here.

6 The corporations are the defendants in this
7 case; the families that I represent are the plaintiffs in
8 this case. They are bringing the action.

9 I'd like to tell you just a little something
10 about these families, and if you don't mind I'd like to
11 show you a map of the City of Woburn. This is a map of the
12 City of Woburn. Route 93 is over here and Route 128 goes
13 through here. This part of Woburn is called East Woburn,
14 and this part west. Anne Anderson lived on Orange Street
15 in East Woburn. Anne Anderson's house is right here.
16 Anne Anderson moved to East Woburn in 1965 with her husband
17 Charles and their daughter Christine. The next year,
18 Charles, Jr. was born. In 1968 Jimmy was born. In 1971
19 Jimmy developed leukemia.

20 One block east of Anne Anderson's house is
21 the Zonas, Pat and Joan Zona. Pat has his own business.
22 It's a canteen service for workers. And Joan is a nursing
23 assistant. In 1961, Pat and Joan Zona moved to East Woburn
24 with their son Ron and their daughter Ann. Two years later,
25 John was born. In 1965, Michael was born. In 1972, Michael
developed leukemia.

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Two blocks west of Anne Anderson is Pat and Kevin Kane. Pat is the assistant division head of the Cable Division of the Edison Company. Excuse me, Kevin. Pat is a registered nurse. They moved to East Woburn in 1967. They moved there with their daughter, Peggy, and that year Kathleen was born. The next year Timothy was born. In 1970, Kevin Kane, Jr. was born, and in 1973, Kevin Kane, Jr. developed leukemia.

Two blocks from the Kane's is Richard and Mary Toomey. Richard and Mary Toomey moved to Woburn in 1963. Richard is a sheet metal mechanic for the Litron Company, and Mary takes care of their home. They moved to East Woburn in 1965 and two years later their daughter, Mary Eileen, was born and two years later James was born, and in 1969, Patric Toomey was born. In 1979, Patrick developed leukemia.

One block away from Anne's house to the west is the home of Richard and Lauren Aufiero. Richard drives a cab for the Woburn Cab Company, and Lauren is a clerk for the Winchester Company. Richard and Lauren Aufiero moved to Woburn in 1973. In 1979, Jarrod was born, and in 1982, Jarrod developed leukemia.

Between the years 1969 and 1982, within a six-block radius of Anne Anderson's house, eight children developed leukemia. Because so many children developed the

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1 disease in so short a period of time in such a small
2 area, it has been called a leukemia cluster.

3 This area of East Woburn received its water
4 from the two wells that the city closed down because they
5 were contaminated, Wells G and H. Wells G and H are
6 located here on the map. This area of East Woburn received
7 the highest concentration of the poison from Wells G and H.
8 Wells G and H serve a much greater area of East Woburn as
9 well.

10 In another part of East Woburn, north of the
11 cluster area, lived the family of Robert and Diane Aufiero.
12 Robert and Diane are not related to Richard and Lauren.
13 Robert and Diane Aufiero moved into East Woburn in 1973.
14 Robert is a stockbroker, and Diane is an elementary school
15 teacher in Woburn. In 1976, Jessica was born, and in 1981,
16 Jessica developed leukemia.

17 In another part of Woburn lived Donna Robbins.
18 Donna Robbins is a registered nurse. Donna moved to
19 East Woburn with her husband, Carl, in 1969. In 1972,
20 Carl, Jr. was born. Three years later, Kevin was born.
21 And in 1976, Carl, Jr. developed leukemia.

22 One house away from the Zonas in the cluster
23 area lives Catherine and Roland Gamache. Catherine
24 and Roland Gamache moved to East Woburn in 1970. In 1971,
25 Amy Gamache was born. In 1973, Todd was born. And in 1980,

1 their father, Roland, developed leukemia.

2 Ladies and gentlemen, the wells in East Woburn
3 were closed in May of 1979. The wells were closed because
4 they were contaminated with industrial solvents. These
5 industrial solvents are used by industry to clean metal as
6 degreasers. They are often referred to as chlorinated hydro-
7 carbons. And the name "chlorinated" has to do with the fact it
8 has chlorine and hydrogen atoms and a special structure;
9 sometimes they are called chlorinated solvents.

10 The contaminants found in this well, the
11 highest level was trichloroethylene. The second highest was
12 tetrachloroethylene. Trichloroethylene is often referred to
13 by the initials TCE. Tetrachloroethylene is sometimes
14 referred to as perchlorethylene or Perc. It is also sometimes
15 referred to as PCE. The other solvents that were found in
16 the wells were 1,2 trans-dichloroethylene, 1,1,1, trichloroethan
17 sometimes called TCA, and chloroform.

18 These chemicals are on the EPA's priority
19 pollutant list. These chemicals are toxic. These chemicals
20 can destroy cells. These chemicals can be toxic to the
21 heart muscle, to the heart tissue, to nerves, to mucous
22 membranes, to the gastrointestinal system, to the skin,
23 and they can affect the body's ability to fight disease.
24 These chemicals can cause cancer.

25 The EPA has determined that -- or has since it

has determined that trichloroethylene and perchlorethylene are probably human carcinogens, it has determined that the maximum allowable limits recommended by the EPA in drinking water for trichloroethylene and tetrachloroethylene are zero.

Ladies and gentlemen, this is going to be a long trial. There are going to be lots of witnesses, lots of experts, lots of medical disciplines. There are going to be lots of documents and lots of days of trial taken up in witness' testimony. I believe that you will find that many of the issues in this trial are going to be extremely interesting, although I do prepare you, because of the nature of the case, there may be long days in which things are quite tedious and boring, though I do think at various times during this trial there will be extremely interesting issues.

Jury service is a great honor. It is also a great burden. You have been taken from the normal routine of your lives and asked to sit here and listen and decide. I want you to know that the families that I represent, that all of us who represent the families, and I know I speak for the defendants and their attorneys as well, we want to thank you for undergoing the hardships and the inconveniences of jury service to sit here and listen to this case.

The questions that you consider in this case are of extreme importance to everyone.

1 To answer those questions, you are going
2 to need evidence. The evidence to answer those questions
3 was not easy to obtain. For Anne Anderson, the trial
4 began with the horror of learning that her child had
5 leukemia, the horror followed by the realization that her
6 tragedy was not the only one in Woburn, there were others,
7 others in the Massachusetts General Hospital Clinic who
8 waited for their children to be treated for leukemia, mothers
9 that Anne saw in town at the market in her neighborhood,
10 too many mothers.

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1 Realization followed by shock when she
2 discovered that the wells were contaminated with cancer-
3 causing agents, shock that the water which she and her
4 neighbors had complained about for years because of its
5 bad odor but which she had been reassured by the City
6 officials was safe, was not safe; realization, shock,
7 followed by frustration, frustration in trying to get
8 others to listen, to question, and to investigate, other
9 people, private groups, governmental agencies; frustration
10 followed by determination that she would not be denied
11 the answers, she would find out who if anyone was responsible
12 for the pollution of the Wells G and H and she would find
13 out if that pollution was responsible for Jimmy's leukemia
14 and the leukemia of the other children in Woburn.

15 Anne helped form with others in the
16 community a community group, FACE, for a cleaner
17 environment, a group of families and people who came together
18 to find out what was happening in their community, to
19 educate themselves, to disseminate information, and to
20 urge government agencies to take proper action, and Anne
21 and the other families came together to investigate, to
22 investigate how the wells were contaminated and who did it
23 and what happened to them because of it; and Anne was
24 instrumental in getting scientists at the Harvard School
25 of Public Health to undertake an unprecedented health

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1 survey of Woburn, determination followed by long, hard,
2 expensive work, work that will continue throughout this
3 trial but work which has given her and the families an
4 understanding and a knowledge and an appreciation for
5 what happened in Woburn, a knowledge and an appreciation
6 that what happened in Woburn did not have to happen.

7 To gain that understanding the families
8 had to look at many things. The families had to look at
9 their own health histories. They had to collect all of
10 their medical records and undergo extensive examinations
11 and tests. The families had to understand the toxic
12 properties of these chemicals and understand how they harm
13 the body, and the families had to understand how the water
14 from Wells G and H and the contaminants in the water from
15 Wells G and H was distributed throughout the City; and
16 the families had to understand how contamination moves
17 through the groundwater to the wells and how it did move
18 through the groundwater to the wells and from whose property
19 it moved. The families had to understand what happened on
20 those properties, who was responsible for allowing this
21 poison to be dumped into the ground.

22 The medical investigation revealed that
23 these families had a consistent pattern of sickness and
24 disease, sickness and disease that did not just affect the
25 children who had leukemia but affected their brothers and

1 sisters and their parents.

2 These chemicals are toxic to the heart
3 tissue. They interfere with the heart's ability to beat
4 regularly. These families in examining their health
5 histories and undergoing tests realized that both of the
6 parents in these families had developed cardiac problems
7 in a fairly young period in their lives, most of them
8 during the mid to late 1970s and some in the early 1980s,
9 cardiac arrhythmias in most families of both parents,
10 cardiac arrhythmias which required medication and treatment
11 long before they realized the wells were contaminated.

12 These chemicals are toxic to the nerves.
13 They destroy the nerves of the brain, the spinal cord and
14 the nerves that feed your arms and legs; and the medical
15 investigation revealed that these families suffered from
16 poisoning of their nervous system. There are neuro-
17 psychological tests and neurological tests which have been
18 developed specifically to determine if someone who has
19 been exposed to these solvents has sustained nerve injury,
20 whether they have sustained solvent poison.

21 These families also underwent three
22 neuropsychological and neurological tests, and these tests
23 revealed that every one of them to some degree had been
24 poisoned by exposure to solvents, both the children and
25 the parents.

1 These chemicals affect the body's ability
2 to fight disease, and these families in looking back over
3 their health histories realized that there was a consistent
4 pattern of frequent infections, gastrointestinal problems,
5 and skin rashes and other health problems which formed a
6 symptom complex in each family similar to the other
7 families.

8 The investigation was not just into their
9 medical history and health, the investigation also included
10 the aquifer, the area that fed the Wells G and H. This is
11 a diagram of the aquifer area (indicating). This area is
12 a little north of the cluster area where Anne and the
13 other families lived. This is Route 128 up here. Route 93
14 would be over here. This is Salem Street, and the middle
15 is Wells G and H, and this is the Aberjona River. This
16 area is known as an aquifer.

17 An aquifer is an underground water supply.
18 This particular aquifer rested in a bowl of bedrock, a
19 bowl filled with rock and sand which contained water,
20 underground water. The rim of the bowl is roughly in this
21 area.

22 The EPA, the Environmental Protection
23 Agency, undertook an investigation of this aquifer area
24 to try to determine from which properties the plumes of
25 contamination, the rivers, the underground rivers of

1 contamination were coming; and to determine that they
2 placed wells, monitoring wells. wells dug into the ground
3 to sample the water, to determine if the wells could detect
4 contamination; and by digging these wells and sampling
5 the water the EPA hoped to be able to determine where
6 plumes of contamination, rivers of contamination, were
7 coming and from what direction.

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1 At the conclusion of their investigation,
2 the EPA's investigation, of this aquifer area, they
3 identified three plumes of contamination, three rivers.
4 One of them came from the northeast, from the direction of
5 the Universe Company, a uniform rental company, and one
6 of them came from the direction of the -- to the north.
7 To the northeast. Universe is in the north. Grace is in
8 the northeast. The W. R. Grace Company's plant is located
9 in the northeast of this aquifer at the rim of this bedrock
10 bowl. The W. R. Grace plant is 2400 feet from Well G.

11 The other plume of contamination that the
12 EPA determined came from the southwest, from the direction
13 of this piece of property owned by the Beatrice Foods
14 Company. This piece of property, some 15 acres or more,
15 is roughly 600 feet from Well G.

16 Ladies and gentlemen, the defendants deny
17 that their properties contributed to the pollution of
18 Wells G and H. The aquifer and their properties have been
19 investigated by the Environmental Protection Agency. Their
20 properties have also been investigated by their own
21 engineering firms, and their properties have also been
22 investigated by an engineering firm retained by the families.
23 That engineering firm is the Weston Geophysical firm in
24 Westboro, and the man who headed the investigation is
25 John Drobinski. And John Drobinski will be coming before

1 you in the next few days to tell you the results of all of
2 those investigations.

3 Let me tell you a little about the
4 Beatrice site. The Beatrice site is connected to the
5 tannery, a tannery that was owned by the Beatrice Foods
6 Company. The tannery and the property were purchased together.
7 This property by the river, sometimes referred to as the
8 15 acres or the wetlands, provided process water, underground
9 water to be used in the tannery manufacturing process.
10 And the well on the property is located right here,
11 sometimes referred to as Riley Well 2. It's called Riley
12 Well 2 because previous to that, there was another well on
13 the tannery property, Riley Well 1.

14 The tannery fronts Salem Street. Next to
15 the tannery is Murphy's Waste Oil, a waste oil reclamation
16 service. And next to that is the Whitney Barrel Company,
17 a company that reclaims 55-gallon drums, 55-gallon drums
18 containing chemicals of any kind and description. And
19 next to the Whitney Barrel Company is the Aberjona Auto
20 Parts, an auto salvage yard.

21 To get to this 15-acre property, you have
22 to go on an access road from Salem Street through the
23 property of Aberjona Auto Parts and Whitney Barrel to the
24 15 acres. The access road goes up north to south and
25 cuts through the 15 acres. The access road continues up to

1 Olympia Avenue and beyond. This access road, running along-
2 side it is the sewer for the City of Woburn. It's also
3 the sewer for the Metropolitan District Commission.

4 If you go on this property, this 15-acre
5 property, and you go along the access road, you will see
6 along this access road debris piles, drums, drums in piles,
7 rusted drums, drums containing chemical sludge, and empty
8 rotted drums, drums in piles and drums by themselves.
9 You'll see bungs, bung caps from drums, sealing rings from
10 drums, and you will see on this property every manner of
11 industrial waste.

12 This site has been fully mapped by the
13 Weston Geophysical engineering firm and they will be
14 showing you the results of that mapping.

15 The soil and the groundwater in this area
16 has been fully tested, and the results of those tests show
17 that the soil and the groundwater is literally soaked with
18 solvents, solvents in some of the highest concentrations
19 seen by the lab analyzing the results.

20 The tannery purchased this property in 1952,
21 and in 1958 the tannery put in this Riley Well 2. The
22 tannery had a sewer which ran from the tannery, and still
23 does, down the hill, under the railroad tracks, across the
24 property to the 15 acres and connects up with the city
25 sewer system. The tannery is a very big tannery. It has

1 been in Woburn for a long time. It's owned by the Riley
2 Company. The John J. Riley family has owned the tannery
3 since the 1920s.

4 The tannery processes animal hides, and
5 in processing animal hides, it produces a lot of animal
6 grease and fat. The tannery uses a lot of chemicals, chrome
7 and solvents. To get rid of their liquid waste, the tannery
8 had sludge lagoons in back of the tannery buildings in
9 this property, and the sludge lagoons would feed into the
10 sewer. Liquid waste from the sludge lagoons would go into
11 the sewer. The liquid waste they couldn't put into the
12 sewer went in a drainage ditch that ran alongside the
13 sewer to the 15 acres and to the Aberjona River. And the
14 liquid waste that the tannery couldn't force into the
15 drainage ditch, it scooped out of the lagoons and dumped
16 on the property. The tannery also dumped sludge from those
17 lagoons on the 15 acres.

18 Now, these waste disposal practices were
19 unlawful. In 1956, the Department of Public Health notified
20 the tannery that its dumping of industrial waste on this
21 property was a violation of the public health laws and
22 constituted a public nuisance, public health laws which were
23 to protect the public drinking water supply. And the
24 tannery was told to clean up the industrial waste on their
25 property because it endangered the public health because of

1 its potential for polluting the river and the groundwater.
2 The tannery continued to receive notices from the Department
3 of Public Health about cleaning up that property for several
4 years.

5 Although the tannery was fully informed of
6 the dangers of dumping industrial waste on this property,
7 throughout the 1950s and the 1960s, tannery waste was
8 allowed to flow onto this property. It flowed onto the
9 property from the drainage ditch, and it flowed onto the
10 property from backup from the sewer. And witnesses will
11 come before you, witnesses who were children during that
12 time, and tell you what they saw during the 1950s and the
13 1960s and how the tannery waste used to go from the tannery
14 down that ditch and from the sewer and go onto the land.
15 That tannery waste contained solvents.

16 Now, Mr. Riley says that there are no
17 records for the tannery going back before the wells were
18 closed down. All those records have been destroyed.
19 But Mr. Riley does admit that the tannery used tetrachloro-
20 ethylene in its tannery manufacturing process, at least in
21 the '60s, the 1960s. And the tannery admits it used
22 trichloroethylene. Those are two of the solvents found
23 in Wells G and H.

24 Mr. Riley vehemently denies that the
25 tannery used trichloroethane.

1 Well, tannery waste was found on the
2 property, and it has been sampled and tested, and the
3 tannery waste on that property shows extremely high levels
4 of tetrachloroethylene and also trichloroethane as well as
5 trichloroethylene.

6 Aside from the tannery waste, this
7 property, the 15 acres, throughout the 1950s, the 1960s
8 and the 1970s was an industrial dumpsite. It was used
9 by the Whitney Barrel Company throughout the '60s and '70s
10 for the dumping of chemical waste and chemical sludges,
11 chemical waste and sludges containing the solvents, and
12 it was used for the dumping of drums containing these
13 solvents.

14 An employee, former employee of the
15 Whitney Barrel Company will come before you and tell you
16 how he used to clean the drums at the Whitney Barrel
17 Company, the drums that contain all sorts of chemicals,
18 with trichloroethylene, and that on many occasions
19 Mr. Whitney would tell him to dump poison from the drums
20 onto the 15 acres. And it was his understanding that this
21 was the practice of the Whitney Barrel Company.

22 Mr. Drobinski will show you items found
23 on the 15 acres which include drums with Whitney Barrel's
24 name on them, and other items indicating they came from
25 the Whitney Barrel Company. We'll also present evidence

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1 that the drums and the sludges containing these solvents
2 were disposed of on this property in the 1960s. We will
3 show you aerial photographs taken in 1966, in 1969, and
4 1974 which will show you that the property was a dumpsite
5 for drums, huge underground storage tanks, and every kind
6 of manner of industrial debris. And you will see those
7 plainly in those aerial photographs. You will see them
8 plainly located along the access road and to the north
9 of the site.

10 Now, Mr. Riley knew that dumping
11 industrial waste on this property endangered Wells G and
12 H. Mr. Riley knew that dumping industrial waste on the
13 15 acres could contaminate and pollute the groundwater and
14 the river. He knew that from the correspondence he got
15 from the Department of Public Health in the 1950s. But
16 he also knew a lot more. The same engineer who put in
17 Riley Well 2, Mr. Maher, also put in the City's wells in
18 1964. And Mr. Maher told Mr. Riley that the same groundwater
19 that fed these wells also fed his well on the 15 acres. And
20 when these wells were put in, the City of Woburn condemned
21 part of Mr. Riley's property along the river to protect
22 those wells.

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And Mr. Riley knew more than that. When these wells were being put in by Mr. Maher, Mr. Riley has stated under oath that Mr. Maher told Mr. Riley that Mr. Riley should tell the mayor of the City of Woburn, "Don't put these wells in there because this water is not fit for drinking purposes, this water is only fit for industrial purposes," but Mr. Riley didn't tell the mayor, Mr. Riley didn't do anything.

Now, in the 1970s, Mr. Riley looked around for a buyer for his tannery and the 15 acres, and he found one, the Beatrice Foods Company.

In 1978, Mr. Riley managed to get the Beatrice Foods Company to accept all the environmental responsibilities and liabilities arising out of the tannery and the 15 acres. Now, Beatrice Foods will say they were a victim, but we intend to show you evidence that Beatrice Foods willingly and knowingly accepted these environmental responsibilities and liabilities.

Now, who is the Beatrice Foods Company? Beatrice Foods is a huge conglomerate, one of the largest corporations in the world. Aside from peanut butter and orange juice, they were also a chemical company. In fact, as a chemical company, they had been supplying chemicals to the Riley tannery for the previous 30 years. Beatrice Foods was a tannery company, they had a tannery division,

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1 and they wanted to add the Riley tannery to that division.
2 And the Beatrice Foods Company knew all about how industrial
3 waste can pollute a drinking water supply, because the
4 Beatrice Food Company had a water purification division,
5 a water purification division that sold filters to families,
6 water filters to families, so that they could remove
7 industrial waste from water that had been polluted.
8 Industrial waste which had trichloroethylene and tetra-
9 chloroethylene.

10 Now, Beatrice Foods told their shareholders
11 that they made an examination and investigation of all the
12 properties of the Riley tannery, and prior to the purchase,
13 Mr. Riley refused to state to the Beatrice Foods Company
14 that he didn't have any environmental problems or any
15 problems with environmental authorities or that he wasn't
16 in violation of any environmental laws or rules or regula-
17 tions.

18 Beatrice purchased the property anyway.
19 Prior to the purchase, Beatrice Foods knew it would have to
20 spend up to a million dollars for potential environmental
21 Protection Agency problems.

22 Now, Beatrice Foods neither during these long
23 negotiations -- and they approached Mr. Riley a full 18 months
24 prior to consummating the deal -- neither during those times
25 they were negotiating in or any time after the sale of the

1 property at Beatrice, did Beatrice ever notify any
2 governmental authority about the condition of the 15 acres
3 or the fact that the 15 acres and the industrial waste dumped
4 on it could affect Wells G and H.

5 In the summer of 1978, Mr. Riley and Beatrice
6 Foods consummated the deal. That summer, Lauren Aufiero
7 became pregnant with Jarrod, and during the next months the
8 Beatrice Foods Company kept silent. During those months of
9 silence Jarrod Aufiero continued to be exposed in his mother's
10 womb to the poison water being pumped from Wells G and H,
11 and he didn't stop being exposed until a few months after he
12 was born. And the reason it was stopped was because someone
13 notified governmental authorities. Someone notified
14 governmental authorities, but that wasn't Beatrice Foods.
15 That someone was someone who was concerned about the dumping
16 of material further away, much further away than the
17 Beatrice site and Wells G and H.

18 It turned out that source did not contaminate
19 Wells G and H, however, it was the notification of the
20 governmental authorities by that concerned individual that
21 led the authorities to test Wells G and H and to discover
22 for the first time that they were contaminated with these
23 industrial solvents, and it was then that the wells were
24 closed.

25 Ladies and gentlemen, the other property is

1 owned by W. R. Grace. W. R. Grace is also one of the
2 largest corporations in the world. W. R. Grace is a multi-
3 national chemical corporation with varied interests in a lot
4 of different industries.

5 The Cryovac Division is a member of the
6 industrial chemical group of the Grace Chemical Corporation.

7 In June of 1960, the Cryovac division started
8 this plant in Woburn. The site of the plant had been farm
9 land. The plant had a machine shop, a paint shop, a welding
10 shop, and the plant used solvents. The plant used solvents
11 to clean metal, to degrease metal as paint thinners and
12 strippers and in cooling oils and in cutting oils.

13 Now, the W. R. Grace Corporation knew all about
14 the dangers of solvents during the period of time the W. R.
15 Grace Company owned the Woburn plant. Throughout that
16 period, the W. R. Grace plant was aware of the health
17 hazards posed by solvents. And the Grace Corporation was
18 fully aware of the potential for industrial waste, including
19 these solvents, to contaminate the environment or water
20 supply if they weren't disposed of properly.

21 The W. R. Grace Corporation had resources
22 available to it in all of the sciences and all of the
23 disciplines, medicine, engineering, toxicology, and the
24 officials of the W. R. Grace Corporation, including the
25 president of the Cryovac division, were fully aware as to

1 how solvents can cause injury to people.

2 Now, the law, then, as it is now, prohibited
3 the dumping of industrial waste into the ground. And the
4 law, then, was concerned with the effect of dumping
5 industrial waste and its effect on public health, and so
6 these were the public health laws, the public health laws
7 that were trying to protect the public water supply.

8 Now, how did the W. R. Grace Company, its
9 Woburn plant, dispose of its waste solvents? Well, we asked
10 Vin Forte, who is the plant manager, of the Grace plant,
11 and Vince Forte said that he couldn't tell us, that there
12 was only one man at the Grace plant that could tell us what
13 chemicals were used, how the chemicals were disposed of, one
14 man who was responsible for environmental affairs, chemical
15 use and chemical disposal at the plant. That one man was
16 Paul Shalline, and we should ask him.

17 So we went to Paul Shalline, and we asked him.
18 And Paul Shalline said he didn't know, either.

19 For the families to find out how the W. R.
20 Grace plant in Woburn disposed of its waste solvents, it had
21 to interview past and present employees, and it had to
22 undergo -- undertake its own investigation of the site.
23 That interview and that investigation revealed that the
24 Grace plant, from its beginning in 1960, at least up until
25 the closing of the wells, for at least 20 years, disposed of

its hazardous waste, waste solvents, by dumping them into
the ground, down storm drains and into pits.

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1 Employees were told when the plant
2 opened to dump the waste solvents to the rear of the
3 building. At this time in the beginning these are the
4 additions which later were put onto the plant. This is
5 the outline of the main building and they were told to
6 dump it into a pit behind the building on the ground, and
7 some employees within the first year of the company's
8 existence went to Paul Shalline and said, "This is wrong.
9 We shouldn't be dumping this stuff on the ground."

10 Now, this person didn't have any special
11 training, was a recent high school graduate, but had
12 figured out that it was wrong and said to Paul Shalline
13 that there were companies that could legally haul it away
14 and that's what should be done. The dumping of the waste
15 continued. In fact, this individual was one of them, this
16 employee was one of them who Paul Shalline asked to
17 continue dumping of the waste.

18 Now, in 1966 the first addition to the
19 building was added and the dumping ground was moved out
20 behind that addition and the building was built over this
21 pit that they had used for disposal of waste solvents and
22 the ground they had used for disposal of waste solvents.

23 The drains, the storm drains for the
24 buildings empty into this storm drain trench which ran
25 along here.

M1-2

1 Investigations this past summer
2 uncovered a storm drain underneath these buildings as they
3 exited out the buildings under what is now the parking
4 lot. The storm drains were tested and the storm drains
5 had high levels of trichloroethylene and other solvents,
6 and wells were placed, ordered by the EPA, around this
7 building as indicated on this drawing; and these wells,
8 especially the ones right here along the south part of
9 the building, have detected extremely high levels of
10 solvent contamination including trichlorethylene and other
11 solvents. These wells are right near where that ditch
12 had been covered over behind the building of these
13 additions.

14 Now, in the mid-1960s W. R. Grace
15 Corporation became concerned about the governmental interest
16 in pollution control and so they sent a memo to their plants,
17 all their plant managers, and told them of their concern
18 about the government's interest in pollution control
19 matters; and they said to the plant managers that "We are
20 going to establish a pollution control officer for the
21 corporation and that each plant should designate a
22 pollution control officer to coordinate with the
23 corporation's pollution control officer."

24 The person they chose to be the Woburn
25 plant's pollution control officer was Paul Shalline. The

1 memo suggested that the plant should try and get
2 representatives on local boards to see if they could
3 influence legislation or enforcement of environment laws,
4 and the dumping of waste solvents continued at the Grace
5 plant.

6 In 1970 the W. R. Grace Corporation
7 because of the tremendous interest and concern of the
8 public and the government in industrial pollution did a
9 survey of its plants, a confidential survey, and the
10 survey revealed that their plants had a lot of pollution
11 problems and the survey revealed that the corporation was
12 doing little to monitor how the plants were contaminating
13 the environment; and the survey told the plant managers
14 that management would soon be sending directives to the
15 plant managers about how they should handle antipollution
16 activity and what should be their priorities.

17 During this period of time the W. R.
18 Grace Corporation knew that as a corporation it was spending
19 far less than every one of the other major chemical
20 companies, that the W. R. Grace Corporation was spending
21 far less for antipollution activity than Dow Chemical,
22 Monsanto, and Union Carbide.

23 Now, during this period a proposed
24 pollution control policy was drafted for the W. R. Grace
25 Corporation. This proposed pollution policy if it had been

1 implemented would have required the W. R. Grace plant in
2 Woburn to immediately stop its dumping activities, to
3 clean up its site, to notify public authorities, and to
4 work with them so that the public authorities could do
5 their job. The policy was never implemented. Instead,
6 a limited policy was implemented that informed the plants
7 that should the government get involved in trying to abate
8 or clean up a plant, the plant should cooperate with the
9 government.

end M-1

1 Two weeks after the pollution survey was
2 reported, two weeks after, a memo was sent around to all
3 the plants and informed them that in the view of the
4 W. R. Grace Corporation the ecology and the environmental
5 threat, as they called it, was adversely affecting
6 business and that plants -- that there was no room in the
7 budget for any more money for anti-pollution activity, and
8 that if there was any plant out there that wanted to get
9 money for anti-pollution activity there was a special
10 procedure established, a special procedure established for
11 approval, a special procedure they had never implemented
12 before.

13 Now, in response to that memo, Vin Forte,
14 the plant manager of the Woburn plant, wrote back to the
15 W. R. Grace Corporation, the Cryovac Division, and said,
16 "There are no pollution problems at this plant that require
17 attention. We have not spent money on anti-pollution
18 activity and we don't foresee the need to spend money on
19 anti-pollution activity."

20 And the Woburn plant continued to dump
21 its waste solvents into the ground and into drains.

22 In 1973 the W. R. Grace Corporation became
23 concerned about governmental regulations concerning
24 trichloroethylene, and in 1975 the W. R. Grace Corporation
25 sent a memo to its plant managers and said that the

2
1 government was threatening to impose a comprehensive health
2 monitoring system for any plant where workers were exposed
3 to trichloroethylene. Because the corporation didn't want
4 to undertake that comprehensive medical monitoring
5 program, it requested that its plants cease using trichloro-
6 ethylene.

7 Now, in 1973, the same year, the Commonwealth
8 of Massachusetts promulgated new rules and regulations about
9 the disposal of hazardous waste. These rules and
10 regulations were far stricter and more explicit than anything
11 that had ever been passed before, and increased the
12 penalties for companies that violated its improper waste
13 disposal methods.

14 One year after the Woburn plant got the
15 memo about the danger of trichloroethylene and the
16 request to cease using it, one year after the Commonwealth
17 of Massachusetts promulgated explicit rules and regulations
18 mandating how these chemicals are to be used and disposed
19 of, one year after in 1974 the plant dug a pit to the rear
20 of the property and they poured several drums of trichloro-
21 ethylene and other chemical waste into the pit and they
22 buried several drums containing these solvents into the
23 pit, and they covered the pit over.

24 Now, that wasn't the only pit that that
25 plant dug on its property for the disposal of chemical

1 waste at that one-week date because the company has
2 admitted to it, but there are others. The site investigation
3 this past July in which we went on the property with the
4 EPA and in which W. R. Grace did excavate under a consent
5 order by the EPA, we uncovered another pit to the rear of
6 the property, another pit that had been dug, another pit
7 whose soil was soaked with contamination from chemical
8 waste that had been poured from drums. That pit also
9 had been covered over, but there may be others still.

10 You will hear from employees, past and
11 present, and they will tell you about pits that they
12 remember, and we are going to have to try and figure out
13 how many pits there are on the W. R. Grace property.

14 Now, in 1975, the W. R. Grace Corporation,
15 after evaluating the available evidence, issued an immediate
16 cease order to all of its plants, an immediate cease order
17 demanding that they stop using trichloroethylene, and the
18 W. R. Grace Corporation informed its plants that the
19 chemical trichloroethylene had been sited as a carcinogenic,
20 a cancer-causing agent, and as an agent with proven serious
21 health hazards. The W. R. Grace plant never informed
22 governmental agencies that it had been disposing of these
23 cancer-causing agents for the 15 years, and the W. R. Grace
24 plant continued to dispose of its waste solvents into the
25 ground, and the W. R. Grace plant remains silent.

1 W. R. Grace remained silent for years,
2 as silent as the chemicals flowed from their property to
3 the wells.

4 Ladies and gentlemen, in 1974,
5 Michael Zona died. He'd been in treatment for three years.

6 In January 1981, Jimmy Anderson died.
7 He'd been in treatment nine years.

8 The following August, 1981, Carl Robbins
9 died. He'd been in treatment five years.

10 One month later, Patrick Toomey died. He'd
11 been in treatment two years.

12 One year later, Jarrod Aufiero died.
13 He'd been in treatment only two years.

14 That same year, Kevin Kane, Jr. went into
15 remission. He'd been in treatment for nine years.

16 And Jessica Aufiero went into remission.

17 Roland Gamache who had been on intermittent
18 chemotherapy since 1980, Roland Gamache in the last year,
19 his condition turned critical. Roland Gamache is now in
20 what they call last crisis. His body is overproducing
21 white cells. The hope for Roland Gamache is a bone marrow
22 transplant and just this week he went to the midwest to get
23 that bone marrow transplant. The hospitalization and the
24 treatment will last several weeks. The outcome is
25 uncertain.

M3-1

1 After you have heard this evidence the
2 defendants will have an opportunity to come before you and
3 put before you any evidence that they have in their defense.
4 They will tell you that they didn't pollute the wells and
5 W. R. Grace will tell you that their only trace contaminants
6 in the property were disposed of by teaspoons and coffee
7 cups, and the Beatrice Foods Company will tell you that if
8 their property is contaminated they don't know how it got
9 there; and both of them will tell you that the

10 little that was dumped into the ground, it didn't get
11 to the groundwater, and the little that got to the ground-
12 water didn't get to the wells, and the little that got to
13 the wells didn't get to the homes, and the little that got
14 to the homes didn't get to their bodies, and the little
15 that got to their bodies didn't do them any harm.

16 This isn't toxic and may, according to
17 some of their experts, may, may be good for you. The
18 plaintiffs are sick and if they're sick they're normal
19 unhealthy people. Their leukemias, well, there do seem to
20 be a lot, but there are many clusters, many clusters
21 without a reason. There are many clusters that government
22 and industry hasn't given an explanation for.

23 Now, W. R. Grace and Beatrice Foods will
24 point in many directions. They will say that they didn't
25 pollute the wells, and if they did pollute the wells, well,

M3-2

1 there were others who polluted the wells; and if there were
2 others who polluted the wells there were others that were
3 dumping like we were and that makes it okay.

4 They will point to the northeast above
5 128 where they found arsenic pits and rottings and they'll
6 point to the northwest out here to piles of drums that have
7 been found; but no evidence that there's a plume emanating
8 from those areas, and they will point to 150 years of
9 industry in Woburn and they'll point to manure piles and
10 piggeries and they'll point to the Aberjona River; and
11 there's no evidence that solvents in the Aberjona River
12 polluted the Wells G and H.

end M

1 They will point their fingers in every
2 direction and at other people. They'll point their fingers
3 to the city, and they'll claim that the city was asleep,
4 the city didn't catch them, the city allowed them to do
5 what they did, the city never discovered what they were
6 doing. And they should have. And they will point in
7 every direction and at everybody else except in two direc-
8 tions. W. R. Grace and Beatrice Foods will never point at
9 each other or at themselves. But the evidence we intend to
10 present to you will show that the major polluters of Wells G
11 and H were the W. R. Grace Company and the Beatrice Foods
12 Company.

13 Now, after all this evidence has been
14 presented to you, after you've had an opportunity to
15 consider all of this evidence, you're going to be asked to
16 make some very important judgments. Because the defendants
17 have denied that what they did was wrong, you, on behalf
18 of society, will be asked to make a determination as to that
19 wrong. And because the defendants have denied that what they
20 did caused these families sickness, disease and death, you,
21 on behalf of society, will determine whether that conduct
22 caused these families to suffer and the full depth and degree
23 that their conduct caused these families to suffer.

24 The trial will be, as his Honor has instructed
25 you, in three phases. The first phase will examine the

1 defendants' conduct and there will be many witnesses and
2 experts. I want to just introduce to you some of the
3 experts that you will see from the plaintiffs, from the
4 families.

5 Dr. Robert Harris will tell you about how
6 much the industry knew about how toxic these chemicals were
7 and how they knew they should have disposed of them and how
8 they knew that when they weren't disposed of properly, they
9 could do harm.

10 And Dr. George Pinder will explain to you how
11 the contamination flowed from the Grace site to Wells G and H
12 and how the contamination went from the Beatrice site when the
13 wells were pumping.

14 And after you have heard that evidence, you
15 will make a determination as to whether what the companies
16 did was wrong and whether that wrong contaminated the wells.

17 In the second phase, you will have an
18 opportunity to examine the consequences of that conduct.
19 In the second phase, you will have an opportunity to hear from
20 the families themselves. They will tell you what happened
21 to them. That will be the first time that you will have an
22 opportunity to meet the families. They will not be appearing
23 or testifying during the first phase and so they won't be in
24 the courtroom until it is time for them to testify in the
25 second phase.

1 And you will hear from the doctors, the
2 researchers and the scientists who undertook the medical
3 investigation, and they will tell you the results of that
4 investigation. They will tell you what happened to these
5 people and what caused it.

6 And you will then be asked to make a determina-
7 tion as to whether that conduct caused these families injury.

8 And then you will be given an opportunity,
9 as important, to determine the value of what was taken away
10 from these families because of these corporations' careless-
11 ness. You will be asked to determine the value of what was
12 needlessly taken away from these families, the value of a
13 healthy life, the value of a parent's loss, and the value of a
14 child's suffering.

15 In the last phase, you will be asked to make a
16 very important judgment, indeed. In the last phase, you
17 will look at the deaths of the children, you will look at the
18 conduct of the defendants, and then you'll be asked to make
19 a statement. You'll be asked to make a statement in the only
20 language that some corporations understand. You will be
21 asked to make a statement that will insure that the tragedy
22 in Woburn will never be allowed to happen again.

23 These are the chapters, ladies and gentlemen
24 of the jury, that you will be asked to write. I want to
25 thank you very much for your kind attention and your interest

1 and now my brothers have an opportunity to come before
2 you and speak to you as well. Thank you.

3 THE COURT: Before we move to the second
4 opening statement, I think it's appropriate to take the
5 morning recess.

6 Members of the jury, you can retire to the
7 jury room. Before you go, may I make a suggestion to you,
8 that you remember your positions and line up so that you can
9 get into the jury box by going around behind counsel and
10 up through that end so the foreman should line up first, and
11 so on, and behind Mrs. Clark the first alternate, and then
12 you can just file into the jury box without having to kick one
13 another's ankles and bang one another's knees, and it makes it
14 all simpler and easier.

15 So we will take about a 15-minute recess.
16 I think there's a coffee machine up there. I hope it's
17 still working.

18 (Whereupon the jury leaves the courtroom.)

19 (The following is at the bench.)

20 THE COURT: I'm just going to review with
21 Mr. McGrath the information that --

22 MR. KEATING: Do you have our letter as
23 well, your Honor? I think that is what sets forth the
24 information.

25 THE COURT: I had the wrong document. You're

1 right. I just thought perhaps it would be of some use
2 to you, Mr. McGrath, to know that Mr. Clabault's responsibil-
3 ity as far as this case is concerned is quite remote.
4 He was not president of the whole company. He was president
5 of the Dewey & Almy division in Cambridge and has since been
6 in New York and is now with the General Business Group in
7 New York. But this is not the group that has to do with
8 the Cryovac division. So you can carry out your duties with
9 confidence that Mr. Clabault isn't involved in this respect.
10 Thank you.

11 MR. KEATING: Thank you, your Honor.
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1 THE COURT: Mr. Facher, I understand
2 you are next?

3 MR. FACHER: Yes, your Honor.

4 Members of jury, I have distributed with
5 the Court's permission an area map of the cities and towns
6 surrounding Woburn to orient us to where Woburn is and what
7 the surrounding localities were because they are going to be
8 of some importance in this case.

9 My name is Jerry Facher. I'm a partner in the
10 law firm of Hale & Dorr, and I represent Beatrice Foods.
11 With me on this case are my two partners, the one with
12 glassess and the moustache is Mr. Jacobs, and the one with
13 glasses and the moustache is Mr. Frederico. Mr. Jacobs
14 is in the middle. We have also had outstanding assistance
15 from a number of other attorneys, some of whom are in this
16 gallery and whose names were given to you when you were
17 interviewed by the judge, but whom I won't introduce at this
18 time.

19 Now, I represent Beatrice Foods, and
20 Beatrice Foods is probably a company that you best know for
21 food products, for Tropicana, for Peter Pan, for Hunt tomato
22 products, for Wesson oil, for a variety of food products and
23 some consumer goods, Samsonite luggage and Stiffel lamps and
24 other products. And, for a while, Beatrice Foods was in
25 the business of making leather in Woburn. It is really for a

1 very, very short while, and we will come to that in a
2 moment.

3 Beatrice Foods bought the Riley Tannery in
4 November of 1978. That is exactly five months before the
5 wells closed in May of 1979, so they owned the tannery insofar
6 as the operation of the wells were concerned, for about five
7 months. That becomes important because the conduct that is
8 being challenged here is the conduct of the men and women
9 that ran Riley Tannery, the tannery that has been in Woburn
10 since 1915 and has been a good citizen of Woburn and whose
11 owners today are the employees of the Riley tannery.

12 These are the people whose conduct is being challenged as
13 being dumpers and polluters and contaminators. They are in
14 the courtroom and you will meet them in the course of this
15 trial.

16 You will meet Mr. Foley, Mr. Riley, Mr. Kaine,
17 Mr. Hawley, Mr. Jones, and the others who ran this tannery
18 for the last -- You won't meet the people who ran it for 75
19 years, but Mr. Foley has been there for 40 years. He grew
20 up in Woburn. He has six children, and they drank the Woburn
21 water. The tannery drank the Woburn water. You will hear
22 about the operations of the tannery and about the employees
23 who ran it.

24 As his Honor said to you, the defendants
25 are two separate companies. Beatrice, which owned the

1 tannery, as I say, for five months before the wells
2 closed, and Grace, which is not on this map, which operated
3 its business in Woburn. They are not related, they don't do
4 business with each other, they don't know each other, they
5 just share the common experience of being large corporations
6 chosen to be defendants in this lawsuit, among a lot of
7 other people, and you will hear more about that as I go along.

8 The case is going to be decided, as you were
9 promised it would be, on the evidence. I will not make to you
10 an emotional appeal, and I'm not going to argue the case.
11 That comes at the end. What I am going to try to do, as calm-
12 ly as I can and I won't always succeed, is tell you what the
13 evidence is going to be, because I don't think you heard much
14 evidence in the plaintiffs' opening.

15 You have to remember one very, very important
16 overall fact. This is a case about specific chemicals,
17 not a case about hazardous waste, not a case about poisons,
18 not a case about industrial solvents. This is a case about
19 specific chemicals, and they have specific names. And
20 these are the specific names of these chemicals:
21 Trichloroethylene, tetrachloroethylene, 1,1,1, trichloroethane,
22 1,2-trans-dichloroethylene and chloroform. They happen to
23 be solvents, but so do thousands of other things, including
24 half the things in your medicine cabinets, including every-
25 thing you clean the floor with, and the grease, and the stuff

1 you spray on the cabinets to get your fingerprints off, get
2 the kids' fingerprints off, they are all solvents, they all
3 dissolve grease.

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1 Same thing as you degunk your engine, if
2 anybody does that anymore. Those are all common solvents.

3 So we are talking about specific chemicals.
4 It's nice to talk about poisons and wastes and generalities
5 like that that raise the emotions. This is a case about
6 specific chemicals, and it's a case about specific chemicals
7 on specific property. And that property is called the 15
8 acres. And you'll note when you saw Mr. Schlichtmann's
9 map, from the geography, that's way north of the tannery
10 and east. Most of it is north and east. The wells are
11 north and east of the 15 acres.

12 You're talking about specific chemicals
13 on specific property during a specific period of time.
14 I'm not surprised that you didn't hear many dates in the
15 opening of the plaintiffs because dates are important.
16 And those of you that have difficulty with dates, I'll
17 probably repeat that sometime in the middle of this
18 opening. Dates are important. We're talking about a
19 specific period of time, and that period of time is from
20 the time the wells opened, which is about 1965, until
21 about 1977. The wells closed in '79, but you'll hear
22 later that it would have taken a year, a year and a half,
23 two years for any chemicals to get to the wells. So the
24 period that you're talking about and that you have to zero
25 in on is 1964 to about 1977. That's the issue in this

1 case.

2 I'm not surprised that the opening
3 concentrated largely on the medical aspects and on the
4 injuries and all the things that happened to the plaintiffs.
5 That is not the case you are about to hear or will hear in
6 the next two or three months. The case that you are about
7 to hear in the next two or three months deals with whether
8 these chemicals were on this property between 1964 and
9 1967 and in what amounts and in what quantities, and did
10 they in some way go deep into the earth, 60, 70, 80, a
11 hundred feet into the earth, move sideways in the earth
12 and north in the earth to these wells. That's the issue
13 we'll be talking about in the next several months.

14 Now, to know how to resolve these issues,
15 you have to know a little bit about the tannery, the 15
16 acres, the wells, and you have to be interested in what's
17 up here to the north, because this is a valley. Many of
18 you, including me, never heard of the Aberjona River, didn't
19 even know there was such a river. And when and if you see
20 it, you probably won't describe it as a river. It's in
21 the middle of a swamp. But you have to know a little bit
22 about the property, the wells and what's up here in the
23 north.

24 Now, from your little map that I've given
25 you, you can see where the towns are. The U.S. Geological

1 Service has given us a map, very small, but you're going
2 to be able to recognize these things pretty quickly. The
3 intersection of 93 and 128 is going to become very, very,
4 very familiar to you. And everything you look at, you're
5 going to be looking at the intersection of 93 and 128.
6 That little pin is where the wells are. That's Woburn.
7 And it's surrounded, as you know, by Wilmington, by Reading,
8 by Burlington, and by Wakefield. And Stoneham, I mean.

9 Now, the property that we're talking about
10 is shown on this enlargement, which is an aerial photograph,
11 I think around 1984, but I think will be an exhibit in this
12 case. The two orange dots are the wells. The snake you
13 can barely see coming through this is the Aberjona River.
14 Here it is much larger, of course, on this diagram. This
15 land in here is the 15 acres. Basically wooded, marshy,
16 swamp land with some dry spots that I'll tell you about.
17 The property is bounded -- and, incidentally, let's be very
18 clear. I'd like you to remember. We're talking about the
19 15 acres. That's what this case is about. It's not about
20 the tannery, which is down here to the south. It is about
21 the 15 acres. This is where their Princeton experts are
22 going to say contamination was found. Not the tannery.

23 The tannery operations will come into the
24 case, and you'll hear a lot about them. The reason you'll
25 hear a lot about them is because it's very easy to attack

1 tannery operations. But it's not easy to produce
2 evidence, and there is no evidence about contamination of
3 that property during the period we're talking about.

4 Now, what are the southern neighbors of
5 this property, the 15 acres? That's what we're talking
6 about. We all agree -- it's one of the few things we agree
7 on -- we all agree on the neighbors, the southern neighbors.
8 A waste oil company. That's a company that goes around and
9 collects waste oil from gas stations. You know, when they
10 drain crankcases. I didn't know there was such a business,
11 but apparently there is. And they take it, they collect it,
12 and they sell it. And they had tanks all over the place.

13 A barrel company. Another business I never
14 knew existed. They reconditioned barrels. They take
15 barrels from people, they wash them, they fix them up,
16 they paint them, they send them back or they sell them.
17 And, not unnaturally, they had barrels on the property,
18 on the southern end of the property.

19 Aberjona Auto Parts. It's a fancy word
20 for junk yard. Junk auto parts. And, not unnaturally,
21 you would find waste materials of all kinds in connection
22 with crankcases and transmissions.

23 So the property, to begin with, is bordered
24 on the south by three junk businesses: the waste oil, the
25 barrel company, and an auto parts company. Auto parts is
a little generous for what was there.

1 And you can see it on this photograph and
2 you'll see close marked close-ups of it, but this area
3 is the junk auto. Now, contrary to what you heard, the
4 property is landlocked. There's no road going in there.
5 There's no street going into this property. You can go
6 in it by going over someone's property and you can call
7 that an access road if you want, but there's no city street;
8 and when you are out there, if we ever -- if it ever
9 dries up and the weather is warm enough, your boots are
10 thick enough, when we go out there, you'll see that you have
11 to go over the property of the Aberjona Auto Parts to get
12 to where the property begins.

13 Now, what else is on this property?

14 There's a railroad running right alongside of it, the
15 Boston & Maine Railroad, and associated with that is all
16 the kinds of barren conditions that railroads create; and
17 that railroad was an active railroad in the periods we're
18 talking about in the '60s and the early '70s. The commuter
19 train still runs up and down that railroad. There are two
20 sewers that run through that property, neither of which is
21 a Riley sewer and neither of which is a tannery ditch,
22 drain. There's a city sewer and that goes all the way up
23 to the Woburn line, and there's an MDC sewer which goes
24 all the way up to the Wilmington line. And, further,
25 into those sewers dumps all the waste of all the industries

1 that have existed in this Aberjona Valley, and that's what
2 they call it, for hundreds and hundreds of years.

3 Now, the Riley sewer connection doesn't
4 even cross after it leaves the tannery, doesn't even cross
5 Riley property, goes across Murphy and Whitney property.
6 This yellow is the bounds of the Riley 15 acres, and just
7 to orient you, the photograph will -- I'll point out, this
8 is Grace over here on the photograph. And just to fill you
9 in better, this big picture of Lechmere is this building
10 right here. So this little snake going through the wetlands
11 is the Aberjona River.

12 Now, that tells you a little bit about
13 the property. The issues are going to be -- the issue is
14 in the next couple of months: Did Riley or somebody for
15 whose conduct Riley was responsible -- I'm not going to hide
16 behind that -- did Riley or somebody for whose conduct
17 Riley was responsible dispose of these five chemicals on
18 this property? That's the first issue in the case.

19 The answer to that evidence we will show
20 is a resounding no, and when you think about it, you didn't
21 hear anything in the opening, not one statement, that there
22 was trichloroethylene on this property in the period we're
23 talking about; and that's because of another fact that
24 can't be denied, and that is, that the tannery did not use,
25 never used, trichloroethylene. Never. It just isn't used

1 in this tannery's operation.

2 And that fact will not be disputed and
3 you didn't hear it asserted.

4 Small quantities of two of these chemicals
5 were used in tannery operations for cleaning purposes and
6 for diluting material used to waterproof boots. Trichloro-
7 ethane is a cleaning material. This is it (indicating).
8 It's Carbona, a cleaning fluid which -- I'm not known for
9 neatness. I have used this in great quantities, Carbona
10 Spot Remover. Principal ingredients: trichloroethane
11 and perchloroethylene, that's the second one tetrachloro-
12 ethylene. It was used in small quantities to clean
13 certain plates that are used, and it gets used up in the
14 tannery and it gets used up so none of that even gets in
15 the tannery waste.

16 END Q1
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1 Tetrachloroethylene is another solvent
2 that was used, and that's perchloroethylene. If any of
3 you have used spot remover you've been using tetrachloro-
4 ethylene, perchloroethylene. If any of you tried to get --
5 I feel like a grocery store here -- if anybody tries to
6 get stains off your carpet, you're using tetrachloroethylene.
7 These are common solvents. I don't say you should swallow
8 them whole, but ordinary life is filled with these kinds
9 of solvents.

10 In any event, trichloroethylene, which is
11 the villain in this piece, was never used at the tannery.
12 If you take a look at the location of the tannery and the
13 location of the wells, you're going to have a tough time
14 having a tannery waste flow uphill into those wells, but
15 they'll have a Princeton professor that tells you it does.

16 Now, this area is a valley. We're going to
17 get technical about it. It's a progressional valley and
18 it slopes and it's got a natural funnel. And the ground-
19 water and the river run, guess what, north to south. It
20 doesn't run sideways. Believe it or not, the groundwater
21 runs this way and not this way, which probably doesn't
22 surprise you.

23 Now, what more do you need to know about
24 this property? Well, you've got to see what the advertising
25 people like to call the "big picture." I don't like the

1 phrase but that's the way they say it and so for that we
2 can take off the photograph, hide the two gentlemen with
3 glasses and mustaches, and point out to you a big version
4 of what's on your map.

5 Now, what do you see here? You're going to
6 see tragedy in a minute.

7 THE COURT: Turn it so the jury can see it
8 better. You're talking to them, not me.

9 MR. FACHER: This is a map that essentially
10 is the whole area of what is also called, in big words, the
11 Aberjona watershed. That means all of the water that flows
12 into the Aberjona, and this Aberjona River starts in
13 Reading. You didn't see it on Mr. Schlichtmann's map, but
14 he didn't have enough room. It starts in Reading and it
15 winds its way down through Woburn, through the southern
16 part of Woburn and then down into the Mystic Lakes in
17 Winchester. And feeding into it are a lot of tributaries,
18 and they represent the whole Aberjona watershed.

19 Each of these 84 black dots is an industry
20 and I'm going to stick within that period. You make me
21 stick within that period because I'm going to stay within
22 the period. Each one of them is an industry. In 1964 or
23 19- -- heavy industry in 1964 to 1979 bordering on or
24 feeding into the waters of the Aberjona, and you'll find
25 all kinds of chemical companies up there, all kinds of

1 heavy industry. And you want to talk dumps? You'll find
2 plenty of dumps. Mr. Schlichtmann talks about 15 acres
3 as a dump. There were dumps in Woburn all right. They were
4 well known. All you had to do was read the Woburn Times
5 and the Reading Chronicle if you wanted to read about dumps
6 in the '60s and the '70s.

7 Each of those four items, red dots is a
8 dump, either public or private dump, a real dump where
9 there were real fires burning and real barrels with
10 solvents in the dump.

11 Now, see this little squiggle here. That's
12 the 15 acres. You'll get used to seeing it. When you look
13 at a map, look for Salem Street and then look for the
14 railroad and that's the way you'll be able to orient
15 yourselves. Salem Street runs, let's call it, east and
16 west. The railroad runs north and south. So if you look
17 for Salem Street and then I always look for this kind of
18 little angle right here, right above it is the 15 acres.
19 Over here is the tannery. Look at how that industry,
20 those chemical companies, those heavy industries, those
21 piggeries -- incidentally, the green are piggeries --
22 surround the Aberjona and menace the Aberjona. And you'll
23 hear a lot about it.

24 Now, you'll also hear about the sources of
25 pollution that were found in the period '64 to '77, and

1 if I were Wilt Chamberlain I could lift this off and turn
2 it over but I'll let it pass for the moment.
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END Q2
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1 There are dozens of sightings in this
2 area where pollution, organic pollution, various kinds of
3 metallic pollution were found menacing the Aberjona.

4 Now you see the whole watershed and you see
5 the river we are talking about.

6 Incidentally, this lake is not here anymore.
7 (Indicating.) The lake was filled in and big industry
8 was put in there. And there was a terrible scandal up there
9 called Industriplex, that was in this area, which you will
10 hear about, which arsenic and other dreadful chemicals were
11 located, just a mile, two miles, whatever it is, three miles
12 north.

13 And you will also hear, contrary to what you
14 heard in the opening, that TCE was in a drainage ditch that
15 flowed down along the railroad as far south as Salem Street.
16 Well, that is the property.

17 Now, what do you need to know about the wells?
18 Let me tell you about the wells. Wells G and H -- You might
19 want to see, Mr. Cheeseman and Mr. Keating, so I will take
20 that down -- Wells G and H were put in in about '65. They
21 were put in, literally, in a swamp, that is what is there.
22 These little things are swamps, and that is what is there,
23 that is what the property is bordered. They were put in
24 in a swamp of nature, and they were put in in a swamp of
25 industry. Because industry had been in that area and

1 encouraged, chemical companies were a specialty of 130 years,
2 starting in 1853 with the Merrimac Chemical Company, followed
3 by the Consolidated Chemical Company, followed by New England
4 Chemical Industries, followed by Monsanto, followed by
5 Stauffer, followed by National Polychemical, Stephan Chemical,
6 the names go on, and on, all in this area, threatening the
7 Aberjona watershed to the north. And you will hear about it.

8 Well, the wells were put in in 1964, and before
9 you begin to criticize the Town of Woburn, let me tell you that
10 they had expert advice when they put those wells in. They
11 had engineers that told them where to put the wells and where
12 the water was of suitable quality.

13 Originally, the engineers, in 1958, had said the
14 water was too polluted there. That was 1958. What you didn't
15 hear in the opening was that in 1963, the engineers said --
16 1964, "The water was of good chemical quality" -- I'm
17 reading from a document from the Department of Public Health
18 directed to the City of Woburn -- "The water is of good
19 chemical quality and suitable for public water supply."

20 '64 is 50 years after the Riley tannery was
21 established, and 10 or 12 years after this property was
22 bought. So this property was here when those wells were put
23 in. You won't find any evidence saying don't put any wells
24 near that dump. There is no such evidence because it wasn't a
25 dump and nobody ever claimed it was a dump until the plaintiffs

1 brought the case.

2 Well, now, the engineer said to the city,
3 "The city is fortunate in finding additional groundwater
4 of good quality in East Woburn." May 19, 1964, directed to
5 the mayor. The mayor had advice, and good advice with respect
6 to these wells; but before you finish your consideration
7 of where the wells should be placed, the state also approved
8 the installation of these wells. You didn't hear that.

9 The state wrote the Town of Woburn -- You
10 can't put a well in without getting the state's permission,
11 Division of Water Control, whatever it was; today it is the
12 DEQE. The state said, fine, put the wells there. The
13 wells -- the water is of good chemical quality. And when
14 the state wrote to the Town of Woburn, the state said,
15 "Examination of the site shows there are no sources of sewerage
16 pollution in the immediate vicinity, although the J. J. Riley
17 Tannery is located in the general area."

18 So the city, the state, and the engineers
19 all approved Wells G and H going in. They knew where th
20 tannery was located, and they knew where the 15 acres was
21 located.

22 Now, what else is important in this case?
23 Dates are important in this case because we are talking about
24 a period of time in the sixties and seventies. We are
25 not talking about ancient history, which is what you heard

1 about, 1956, tannery sludges, tannery wastes, most of
2 which incidents were very isolated and taken care of.
3 We are not talking about today, 1985, we are talking about
4 a specific period in time, '65 to '77, and you will not find --
5 you will not hear one single piece of evidence, scientific
6 evidence, that there were any chemicals found on that
7 property in 1964 to 1977, 1979. There is no data and no
8 tests, there is no water samples; all these things you heard
9 about, guidelines, amounts of chemicals in the water, did
10 not exist in that period.

11 The engineer that will take the stand
12 tomorrow or the next day, whenever he takes the stand,
13 will admit to you that he has absolutely no data, no
14 evidence -- forget data; that is too fancy -- no facts that
15 tell him what scientists need to know, namely, that these
16 chemicals were on this property.

17 The first thing to remember is there was no
18 disposal of any of these chemicals on this property. The
19 second thing to remember is we never used trichloroethylene.
20 The third thing to remember is there is no evidence, no
21 data, no scientific showing that these chemicals were
22 on the property.

23 Was the property found to be contaminated
24 in the 1980s? Yes. Was Riley's own well -- and that
25 is here, Production Well No. 2 -- was that found to be

1 contaminated? Yes. Riley's own well was contaminated,
2 and Riley was a victim of this contamination as much as
3 anybody else, and that was discovered in 1979.

4 Now, the 15 acres was bought in about '51.
5 It was wild, wooded, bushy, swampy, kind of spooky,
6 I guess, territory. It wasn't used for anything. It
7 never was used for anything, still isn't used for anything.
8 It is not good for anything. Why was it bought? It was
9 bought because Riley wanted to have an additional source
10 of water. You need water to run a tannery. And down here
11 in this little southern corner of the property is Riley
12 Well 2. That is the only part of the property that
13 concerned anybody. This is Riley Well 2, and you needed it
14 for water. Riley was not about to contaminate the source
15 material he needed most in running a tannery, namely,
16 water. That is why it was bought.

17 Now, it was overgrown, it was wooded. I have
18 no doubt there were barrels in and about the underbrush,
19 no doubt there were some timbers there, maybe some other
20 debris. It was land next to a swamp bordered by a railroad
21 track, three junk neighbors on the south. I have no doubt
22 there were materials on that property. But kids played on
23 it, the kids Mr. Schlichtmann will bring in. They stole
24 barrels from Whitney Barrel Company -- borrowed, I guess,
25 barrels from Whitney Barrel Company. They made rafts out of

1 them. They went onto this river and through this swamp and
2 got soaked, dirty. They floated rafts -- they made forts
3 out of the barrels. Maybe even they made a fire or two,
4 maybe they smoked a cigarette or two, they drove junk cars
5 through the area, but through all of that, through all of it,
6 nobody ever called it a dump or cited it as a dump,
7 complained about it as a dump, it is just not so.

8 There are dumps in Woburn, as I have said,
9 boy, are there dumps, but this was not one of them. Now,
10 there was a sewer, as I say, and if that sewer overflowed
11 on the property, all of the waste of other people will be
12 on that property through no fault of Riley.

13 Now, what do you need to know about the
14 closing of Wells G and H that will help you? Well, the
15 first thing you need to know is that the closing of Wells G
16 and H was an accident. It came about by chance. It wasn't
17 any plan, nobody went out there searching for chemicals,
18 it was an accident. I don't say they would be open today,
19 but they might be open a lot longer. It was an accident
20 that came about this way:

21 Up the railroad track, way off this map, they
22 were excavating for one of the stations for the MBTA. Let's
23 see if I can locate it. All right. Here is Salem Street, here
24 is the famous intersection, the two great highways, 93 and
25 128, and here is the Boston & Maine. (Indicating.) Up the

1 Boston & Maine, way north, they were excavating, and they
2 excavated a site that contained almost 200 barrels and maybe
3 more.

4 Incidentally, this site up here goes up for
5 quite a way to a road called Olympia Avenue and 128 is way
6 up here off the map and the barrels were way up there.
7 Even if they were way up there, some smart engineer was
8 worried because these were barrels that had the name of a
9 chemical company on it. Trancoa Chemical Company happened
10 to be a chemical company in Reading. The barrels got there
11 from a trucker in New Hampshire, and they were way up
12 north and they contained chemicals, so some smart engineer
13 said, "Well, maybe we should test the wells," because they
14 know the way I know and the way you will know that anything
15 in the north is threatening the Aberjona and the Aberjona
16 watershed.

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That is why Winchester is always so worried about the Aberjona, because it flows into Winchester.

So they went up there and they excavated and they didn't find these chemicals. Meantime, the barrels disappeared somehow. One of the mysteries. Perhaps the DEQE, the Department of Environmental Quality Engineering can explain to us. They disappeared. And they tested the Wells G and H.

Now, I want to tell you another fact that will surprise you. That was the first time in the history of Woburn that those wells had ever been tested for chemicals of this nature. The first time. May of 1979. And it was by accident. Why? Because these chemicals couldn't be located in water. The instruments for detecting them in the parts per billion and the parts per million were not available in the period we're talking about. And so it wasn't until 1979, maybe '78, that they became sufficiently fine to detect these chemicals. Because, remember, Mr. Schlichtmann said and the judge touched on it, Riley is going to have to know that his conduct is threatening somebody. And there wasn't anybody in the state of Massachusetts, certainly wasn't anybody in Woburn, that was able to detect those chemicals in the water, even if they'd been there. The first time was May of 1979. That is when they became known. And it was by accident. Then the wells were closed. But until that time, there was no way of knowing or predicting anything

1 with respect to these chemicals.

2 Now, why do I tell you all this? Why do
3 you have to know, why do I think you have to know? Because
4 you heard the judge touch lightly, and it will be explained
5 more, on the question of foreseeability. It's another large
6 word lawyers use. But to find anybody responsible for the
7 kind of horrible conduct that Mr. Schlichtmann is describing,
8 that person has to be at fault. And to be at fault, you have
9 to have some idea of what the consequences of your conduct
10 are going to be.

11 When you drive drunk down the main street
12 of your city, you know whatever happens, you're going to be
13 at fault, whether you hit a person or a telephone pole or
14 a hydrant or a store window.

15 But who in 1964 to 1979 could tell that
16 chemicals were around that could be detected, that chemicals
17 would not only get into the water -- This is what the
18 plaintiffs claim -- but sink deep, deep, deep, deep into
19 the earth, and then move sideways and upwards to these wells.
20 Who could predict that?

21 You know which way the groundwater flows in
22 your backyard? If you paint your house or clean your engine
23 and you dump the paint thinner or the turpentine in your
24 backyard, 20 years later, are you polluting somebody's
25 well because the groundwater runs from Arlington to Newton,

1 from Marblehead to Swampscott? There's no evidence whatsoever
2 that anybody, whether Riley or the greatest minds of the
3 water pollution community, knew anything about these
4 chemicals in these wells until May of 1979. And that is an
5 accident.

6 Nonetheless, you're being asked to hold
7 Riley responsible, to be at fault for seeing barrels on
8 his property. And debris, maybe. And not knowing that
9 barrels meant chemicals. If barrels mean chemicals, Routes
10 128 and 93 must be soaked with chemicals because there's
11 nothing but barrels up and down those highways. That
12 barrels meant chemicals and chemicals percolated down and
13 then got into the groundwater. Talk about groundwater. It's
14 underground water. I don't know why they call it ground-
15 water. I like to say underground water. Underground, and
16 then moved underground. And you're supposed to hold Riley
17 responsible for that.

18 Now, are there sewage problems with
19 tanneries? Of course tanneries have sewage problems.
20 There isn't a tannery in America that doesn't have some
21 sewage problem. Tanneries take live hides -- they take
22 hides from animals that have gone through the slaughterhouse
23 and they're delivered to the tannery. It's not pretty.
24 They're delivered in the state in which they came off the
25 animal. And the hair is on it, manure is on it, and those

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1 hides have to be cleaned and soaked, limed, acid added,
2 tanned and made into leather. Somewhere in this slop of
3 a briefcase, I have a piece of leather. Some of you may be
4 wearing Riley leather, I don't know. But that is what happens
5 at a tannery.

6 And the tannery had its share of problems.
7 All of this stuff with the EPA is all modern history.
8 These guidelines people talk about, these standards for water
9 quality, all of these things of the EPA are creatures of
10 '79 and '80. There were no standards. The state didn't
11 even know enough about what the standard was in Wells G and
12 H. They had to have a big consultation before they closed the
13 well. These guidelines all came out in the eighties.

14 Now, in the eighties, they began to really
15 savage this property. So that, unhappily, I can't show you
16 the property when you go out there. You will not be seeing
17 the property in '86 that existed in '64. Forty-three, 44
18 wells have been dug on this property. Bulldozers have been
19 all over the place. Trees have been cut down, paths have
20 been widened. Front-end loaders have been on this property.
21 It once probably was a place where kids would play,
22 probably have a good time, although they got dirty. And
23 all of them have survived it, incidentally, in spite of the
24 fact it was a dreadful dump and dreadful poisons and all that,
25 they'll be on the stand telling you about it.

1 But no more. It's not very pretty to
2 look at, and I can't reproduce it. We took a picture last
3 October. We took the nicest picture we could take. And
4 this is -- Somebody said, one of the plaintiffs' lawyers
5 said, "You ought to put it on a calendar," which I think is
6 not a bad idea. This is the property last October looking
7 south. You're really about here. It's still pretty wooded.
8 Now you'll see some awful pictures, too, of debris and
9 barrels and stuff like that. This is the property looking
10 south. This is the property looking north. You just come
11 in the gate here, right about here. This is the property
12 looking north. That is Attorney Fawcett, in the back of the
13 room there, standing guard.

14 This property has been really the subject
15 of intensive savagery, and all of these wells are in there
16 today, and there's no doubt that areas were bulldozed
17 and knocked down. But that was and is today.

18 In 1964-1977, there was no access road in
19 the sense that you would normally think about it. There was
20 a dirt road that the city sewer trucks could get through
21 and that the MDC sewer trucks could get through, but if you
22 drove down it, the trees would whack your windshield. I mean
23 that is the kind of area that it was. And through all of
24 this, through all of this period when the wells were going
25 in, the industry was surrounding it, and nobody said, "That

1 place is a dump, let's close it down. That place is
2 contaminated." Not a word about it because it wasn't a
3 dump.

4 Now, what else shows that? Let me tell you
5 something that is very important. In 1978 -- that is one
6 year before the wells closed -- the City of Woburn wanted
7 to put another well in that property, another well -- not
8 in the property. Between G and H. In 1978. Think of it.
9 This is after all these years of supposedly being dumped on
10 and the contamination site and all the rest. The city
11 said, "Let's put in another well."

12 Now the tannery has been there 50 years.
13 And this 15 acres has been there 25 years. And the well water
14 has been terrible for 10 or 15 years, because the well
15 water was bad from G and H.

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1 I mean, people will probably tell all
2 kinds of stories and most of them will be true. The water
3 tasted bad, smelled bad. It turned white things brown. It
4 had chemicals in it. They added chlorine. That made it
5 worse. Took the chlorine out. I mean, the newspapers of
6 Woburn are filled with complaints about Wells G and H.

7 Councilmen argued with aldermen. They
8 closed the well, opened the well. Said, Don't close the
9 well, don't open the well. Nonetheless, 50 years after
10 the tannery was founded, 25 years after the property was
11 acquired they decided they'd put a new well right in the
12 same spot, right in the same spot between G and H; and
13 they were going to call it Well I. That's a good name
14 for it. And lo and behold, now it's no longer the
15 Department of Water Control which proved the first water
16 pollution, which approved the first two wells. Now it's
17 the DEQE. And along comes the DEQE, and the DEQE says,
18 "The Department has reviewed the results of pumping tests.
19 The Department hereby approves the pumping test and the
20 well may be constructed." Right next to this big dump
21 Mr. Schlichtmann was telling you about.

22 The well may be constructed says the
23 Department of Environment Quality Engineering if you
24 treat the water, and they were fully prepared, next to
25 this swamp, in this swamp of industry and with the tannery

2
1 there for 50 years to put another well in with the state's
2 approval if it hadn't been for the accident of finding the
3 barrels in May of the next year. This is June of '78.
4 Talking about wells halfway between G and H.

5 If the City didn't see it as
6 contaminated and as a dump and the State didn't see it as
7 contaminated and as a dump and if the State didn't know
8 that chemicals were lurking, silently lurking as
9 Mr. Schlichtmann describes it, the City didn't know and
10 the town didn't know and you don't know which way the
11 groundwater flows, how is Riley supposed to know and how
12 is he responsible for discovery, scientific discoveries
13 of the '80s that the experts from Princeton will say
14 contaminated the earth, sunk way down and then moved
15 sideways and up into the well.

16 How do you hold somebody responsible for
17 deaths of children on that kind of evidence.

18 Now, these wells were tested in this
19 period. You say, Why didn't they test the wells. They
20 were tested to death. Every well was tested. There were
21 tests coming out of the Town's, the City's ears. There
22 were no tests and you won't find any tests prior to '79
23 for these chemicals, these solvents; and incidentally,
24 solvents, anything, there are thousands of solvents. Water
25 is the most universal solvent. There were no tests before

3 1 '79, '78, in that area to find these things; and there
2 certainly was no medical evidence that they could injure
3 anybody -- and I'll talk about that in the closing minutes
4 in my argument -- and if the State couldn't discover them
5 how can Riley be held responsible.

6 There are rules against dumps and there
7 are laws against dumps, and Woburn had its dumping problems;
8 but Riley Tannery wasn't one of them. They were over
9 here, 23, 79, 44, 45, 54, those are the dumps of the City
10 of Woburn.

11 These are the piggeries and these are
12 the industries threatening that green -- we made it green
13 because it's the river -- green watershed.

14 Well, that's the issue that's before you.
15 The issue is disposing. Were these chemicals disposed of
16 on this property and if they were, and they weren't, if
17 they were, could anybody see or tell or know of this
18 tortuous path 60, 80 feet underneath the earth. The ground-
19 water flows north to south and the valley runs north to
20 south, and you will hear that the natural flow is north,
21 really north to southeast, and eventually into the river
22 below Salem Street and out beyond.

end T-1

1 So that is the natural flow in that valley.
2 The valley itself was a victim of industrialization of
3 this whole area and when the EPA finally got the facilities
4 and the instruments and the scientific know-how to deal
5 with this situation they found dozens of wells in this area
6 were contaminated by a hundred and fifty some odd years
7 of industrialization.

8 Well, after you deal with disposal, you
9 have to deal with the groundwater movement, and I've touched
10 on that and I won't elaborate on it anymore except to say
11 that it was only this year, this year, last month, that
12 this expert from Princeton was able to conclude after very
13 extensive scientific tests costing how many hundreds of
14 thousands of dollars with the EPA and all these people,
15 six months' worth of work, 43 wells drilled, only last
16 month was this Princeton professor able to conclude that
17 the groundwater, according to him, went sideways. And
18 even if he was right, how in heaven's name could Riley ever
19 know or foresee anything that resulted?

20 I don't want to spend too much time on the
21 medical issues because you're not going to be trying those
22 issues in the next couple of months, but I do want to
23 devote a minute or two to them because one thing is very
24 clear in medicine, and in the medical evidence in this
25 case, you don't get leukemia from drinking well water

1 from G and H. No doctor, until they found one in this case,
2 had ever rendered that opinion. We have been through every
3 doctor that ever examined these plaintiffs. We have all
4 the medical records. We have all the hospital records.
5 We've talked to all the treating physicians. Until they
6 found a doctor out in California willing to give his
7 opinion, and it was basically a witness who is a professional
8 expert who has done it dozens of times, until they found
9 him there was no medical opinion in this case that said
10 this water caused leukemia. Nobody held that opinion and
11 wrote it down as a professional doctor.

12 You won't find it in the medical records.
13 You don't find it in the hospital records, and you won't
14 find it in the treating physicians' records. Therefore,
15 the plaintiffs have gone out and they've got an expert.
16 This expert is a California doctor. He's not a cancer
17 expert, nor an expert on leukemia in children, a pediatric
18 hemotologist which is what we're talking about, blood
19 diseases in children; he's an immunologist working in the
20 dermatology division in the University of San Francisco
21 and he was so willing to find these chemicals at fault that
22 he gave a sworn opinion in this Court in July 1984 without
23 ever having seen a patient. Yes, without ever having seen
24 a patient this doctor gave a sworn opinion that it was the
25 water that caused all of their problems, not just the

1 leukemia.

2 This is a doctor who will admit that he
3 had several businesses on the side, one a laboratory that
4 failed and another called Acme Burial at Sea. He flies
5 his own plane and he conducted a business for six or seven
6 years, distributed the ashes of people for money over the
7 Pacific Ocean which he called a lot of fun and which he
8 testified was a lot of fun; Acme Burial at Sea. Acme was
9 founded because the A came first in the telephone book and
10 it allowed him to deduct the expenses of the airplane for
11 six or seven years. That's the expert, Dr. Levin or Levine
12 that will be produced.

13 A year or so later they hired his wife
14 who is also a doctor and practices medicine one day a week.
15 During the other days she works doing research for a
16 medical corporation. One day a week she's in the office,
17 and she agrees with her husband. Those are the people that
18 are going to tell you about the leukemia in children.
19 Those are the people that are going to solve one of the
20 great and unhappily unsolved mysteries.

21 There are some things medicine does not
22 know and scientists are not looking at water. They're
23 looking at all causes and they're doing research year after
24 year after year to try and come up with answers. They
25 don't come up with answers without seeing patients and

1 they don't come up with easy answers, or doctors who are
2 professional experts.

3 Now, our doctors also include doctors who
4 treat children for leukemia. That's what we're talking
5 about. We're talking about evidence, pediatric hemotologists
6 who have treated thousands of children -- thousands, maybe
7 a thousand --with this disease over 20 years and who still
8 don't have the answers. They don't claim to have the
9 answers.

10 Now, there are clusters. You've heard
11 about clusters. A cluster is a group of diseases occurring
12 in the same general area for some unexplainable reason and
13 there is a cluster in Woburn; but it's not the first time.
14 Clusters have existed for decades, of leukemia. They have
15 been studying this problem for decades, since 1950, '53.
16 There's been over a hundred clusters studied by the
17 National Cancer Institute and the Center for Disease
18 Control in Atlanta, and in not one of these clusters have
19 they come up with the answer for the cluster. This is the
20 first time this immunologist, flying doctor from California,
21 has the solution. This is the first time that the cluster
22 will be attributed to a chemical.

23 Nobody has the answer but their doctor.
24 Medical science, medical history, medical research just
25 doesn't work that way. There are no easy answers, and

the flying doctor from California doesn't have it.

I'd like to remind you then, in the minute
or two remaining, what the main points are going to be.

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1 We're talking about specific chemicals on
2 specific property during a specific period. There was no
3 disposal of those chemicals by the Riley Tannery. There was
4 no use of trichloroethylene at the tannery. There was no
5 data, no scientific evidence about these chemicals before
6 1979. Riley was a victim of this contamination like every-
7 body else in the area, a victim of a hundred years or more of
8 industrialization and chemicalization, and there was no
9 way to predict or foresee in any fashion that the conduct
10 of seeing barrels or seeing debris or running a tannery
11 or operating a well, that kind of conduct was going to
12 result in people's death by water seeping deep into the
13 ground, by finding chemicals that nobody can find, a depth
14 nobody ever heard of, moving in a direction that nobody
15 ever dreamed of; no way to predict or foresee.

16 When you put aside emotion, as the judge has
17 asked you to do when we chose the jury, and you talk about
18 evidence, you will discover, when you decide the case on this
19 evidence, you will not find any evidence of disposal or
20 contamination.

21 Yes, Beatrice is a large corporation; yes,
22 Grace is a large corporation. Cases are not decided like
23 that in this court. Cases are decided on evidence, and your
24 decision will be based on not how big the company is or how
25 small, your decision will be based on the evidence. And if

1 you base it on the evidence, I have every confidence that
2 you will find in favor of Riley Tannery.

3 Thank you.

4 THE COURT: Well, it is 20 minutes of one.
5 How much time will you need?

6 MR. KEATING: I might go a few minutes
7 beyond one o'clock, but, actually, I planned to take about
8 a half hour. If the judge can indulge me a few minutes
9 after one, I could finish.

10 THE COURT: That would be useful and we will
11 start off tomorrow with evidence.

12 Can you bear with us for a few minutes
13 extra, members of the jury? I think it will be very
14 helpful to get the inertia of the case, forward movement.

15 You will be ready to start testimony tomorrow
16 morning?

17 MR. SCHLICHTMANN: Yes, your Honor.

18 MR. FACHER: Yes, I will be ready.

19 THE COURT: No, I was talking to Mr. Schlichtman.
20 All right, you have no problems?

21 MR. KEATING: No problems, your Honor.

22 THE COURT: All right.

23 MR. KEATING: Thank you, your Honor.

24 Ladies and gentlemen of the jury, my name is
25 Michael Keating, and I am one of the attorneys who represents

1 W. R. Grace.

2 Before we start, I would like to introduce
3 you to my partners who are working with me on this case.
4 Miss Sandra Lynch, Mr. Bill Cheeseman, Mr. Mark Temin.
5 I would also like you to meet Mr. Robert Niles. Mr. Robert
6 Niles is director of Environmental Services with W. R. Grace,
7 and he will be with us throughout this trial.

8 Thank you, Mr. Niles.

9 Let me assure you that no one who has been
10 associated with this case does not feel compassion for the
11 children and for the families of the children who suffered
12 from leukemia. Grace cares. All of us would like to find
13 the answer to what causes leukemia and other cancers.
14 Nothing W. R. Grace did caused these plaintiffs illnesses.
15 The evidence which W. R. Grace will present in this case will
16 establish four facts:

17 Fact 1, the well water was contaminated by
18 a polluted river.

19 Fact 2, W. R. Grace did not contaminate the
20 well water.

21 Fact 3, TCE and Perc did not cause the plaintiffs
22 injuries.

23 Fact 4, nothing W. R. Grace did at the Woburn
24 facility caused any injury to any person, and there was no
25 reason to think that it would.

1 Fact 1, the well water was contaminated
2 by a polluted river. The river is the Aberjona. It runs
3 in a southerly direction from Wilmington through Woburn
4 to Winchester. Our facility is located one-half mile
5 from the Aberjona River. Our facility, incidentally,
6 manufactures a food packaging machine.

7 Wells G and H are located on the banks of the
8 Aberjona River. For over a hundred years the Aberjona
9 River has been the site of Woburn's industries. These
10 have included gas companies, chemical companies, ammunition
11 factories, tanneries, glue factories, piggeries, and the
12 largest arsenic-based producer of pesticides in the
13 United States. These industries are located along the
14 Aberjona for two reasons: First, the river was a convenient
15 source of water which they used in their industrial
16 processes, and, second, the river was a convenient place
17 for these industries to dump the waste that were produced
18 in the industrial processes.

19 These wastes included chemicals such as
20 chromium, arsenic, sulphuric acid, formaldehyde, they included
21 the waste of animals, such as the fleshings from recently
22 slaughtered animals, manure and hides.

23 Every governmental body in Massachusetts
24 that is charged with the protection of public health has
25 condemned the Aberjona River.

1 In 1850, the Massachusetts Department
2 of Public Health said that it was contaminated.

3 In 1950 -- Excuse me, 1900, the same
4 department called it a sewer.

5 In 1972, the Massachusetts Department of
6 Public Health said that more waste had been thrown into
7 the Aberjona River that year than in any year of recorded
8 history.

9 And in 1950, one observer said, "This
10 Aberjona River," he said, "it has to be seen and smelled
11 to be believed."

12 Why were Wells G and H located along the
13 Aberjona River? In 1950, Woburn decided it needed an
14 additional source of water, and it had a choice to make.
15 It could do what most communities in Greater Boston did, which
16 is tie into the MDC water supply, or it could build a new
17 well.

18 Now, if you tie in with the MDC water
19 supply, you have to build a connector, and you have to pay
20 a user's fee. So the City of Woburn decided that they
21 build a new well.

22 They engaged a consulting engineer to advise
23 them as to what would be the best location for the well,
24 and they suggested to the engineer that perhaps the Aberjona
25 River would be, because they knew that was a ready supply

1 of water. The engineer reviewed the situation, and, in
2 1958, reported back to the City of Woburn that they should not
3 put wells next to the Aberjona River, because, and I quote,
4 "The groundwater is too polluted for a public water supply."

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1 The City persisted, and persisted in
2 looking at the Aberjona River. And finally, a few years
3 later, they were able to get the requisite approvals to
4 locate the wells where they were located. And in 1965,
5 they began to pump.

6 As soon as the water reached the homes
7 of people in Woburn, the citizens complained. And they
8 complained bitterly. The water looked terrible. The
9 water smelled terrible, the water tasted terrible. They
10 demanded that the City shut the wells.

11 And after some protest, the City shut
12 the wells, and they tested the water. And they added
13 chlorine, and they added other chemicals. And they
14 reopened the wells. And still the citizens who received
15 the well water protested. They said that the water was
16 undrinkable. They said it was rotting the plumbing in
17 their homes. And some citizens took bottles of the water
18 and sent it to the City Councilors to show them how
19 contaminated the water was.

20 What the citizens of Woburn did not
21 realize at this time was that the water they were drinking,
22 the water that was going into their homes for household
23 purposes was water that was being drawn from the Aberjona
24 River. The Aberjona River is what is known as a leaky
25 river. And this means that as the water flows down the

1 Aberjona, the water actually leaks out of the bottom of the
2 river into the groundwater.

3 You will have testimony in this case,
4 scientific testimony, that when Wells G and H were pumping
5 water to the homes of people in Woburn, that fully half
6 of the water that those homes were receiving was drawn
7 from the Aberjona River. Or, to put it another way, at
8 capacity, Wells G and H pumped 1100 gallons of water per
9 minute. When they were pumping that capacity, 500 gallons
10 of that water was drawn from the Aberjona River.

11 One City Councillor in Woburn who for
12 quite a while had tried to get the City to shut these
13 wells permanently noted during this period of time, he said,
14 "My constituents" -- and I quote -- "have been compelled
15 for the fourth successive year to drink and use for
16 household purposes this foul, stinking, putrid water,"
17 close quote.

18 The wells continued to operate, as
19 Mr. Facher and Mr. Schlichtmann both noted, until 1979.
20 In 1979 there was an incident that was typical of incidents
21 that were happening along the Aberjona River. Somebody
22 came in one night and dumped 182 barrels of polyurethane
23 somewhat upstream from the Aberjona River. And when they
24 went out and looked at that, examined it, it was at that
25 time, in 1979, that was the first time that they had

1 tested the well water for volatile organic chemicals.

2 During all this period of time, industries
3 had been north and upstream of the Wells G and H.
4 National Polychemical was a couple of miles upstream, a
5 major manufacturer of chemicals. Millions of pounds of
6 chemicals. They found there arsenic, chromium, and
7 TCE coming into the river from National Polychemical.
8 There were auto companies, there were piggeries, there
9 were former chemical companies which no longer were in
10 existence, all of which were polluting the Aberjona River
11 during the period of time that these wells were pumping.

12 Where did the TCE and Perc come from
13 that was found in the wells in 1979?

14 I've mentioned that there was some found
15 coming into the river from where National Polychemical was.
16 You will also hear evidence that when the examinations
17 were made of the Aberjona River valley, there were pockets
18 and areas of TCE and Perc throughout that particular area.
19 And I'd suggest to you that the very events that caused
20 those wells to close, the midnight dumping of 185 barrels
21 of polyurethane, is the kind of incident that any time
22 before 1979 might have caused contaminants to get into
23 the wells.

24 My first point to you, ladies and
25 gentlemen, is that the well water was contaminated by a

4
1 polluted river.

2 My second point is that W. R. Grace did
3 not contaminate the well water. Our facility is located a
4 half a mile from the river and a half a mile from the wells.
5 Our facility was built in 1960. The wells were closed in
6 1979. You will hear evidence in this case, scientific
7 evidence, that any materials which were disposed of on our
8 site could not have reached Wells G and H while those
9 wells were still open.

10 Now, why is this the case? This is the
11 case because materials disposed of on our site, in order
12 to leave that site, would have to seep down into what's
13 known as groundwater. Now, groundwater is not a stream or
14 rushing block that exists between the surface of the earth.
15 Groundwater is actually the slow movement of liquid amongst
16 and between particles of earth that are in the subsurface.

V-2
17 If the earth is very porous, like sand
18 and gravel, groundwater moves quite rapidly. If the earth
19 is dense and compacted, the groundwater moves quite slowly.

20 Now, hydrologists are engineers who
21 study the movement of groundwater. And when hydrologists
22 want to describe an area which has sufficient groundwater
23 movement so it makes sense to put a well, they use the
24 expression aquifer. All municipal wells are built over
25 aquifers. Wells G and H were built over the Aberjona River

5 1 valley aquifer.

2 The Grace facility is not located in the
3 Aberjona River valley aquifer. The Grace facility is not
4 located over an aquifer at all. A geological snapshot of
5 the land below our facility shows it to be dense and
6 compacted. A geological snapshot of an aquifer shows it
7 to be loose and gravelly, a sort of sand and gravel type
8 of soil, which causes liquids to move much more rapidly.
9 And it is for this reason that you will find that anything
10 which was disposed of on our facility after our facility
11 was constructed could not have reached Wells G and H while
12 those wells were still open.

13 I've said to you that our first point
14 is that the well water was contaminated by a polluted river,
15 and our second point is that W. R. Grace did not contaminate
16 the well water.

17 Our third point is that TCE and Perc did
18 not cause the plaintiffs' injuries. Leukemia is a mystery.
19 The causes of leukemia are a mystery. We know that certain
20 kinds of leukemia can be caused by radiation, by viruses,
21 and by some forms of chemotherapy. We also know that TCE
22 and Perc do not cause leukemia.

23 This part of the case will involve
24 considerable expert testimony. The evidence that W. R.
25 Grace will present to you will be presented to you by some

1 of the country's leading authorities on leukemia and cancer
2 in children. They will include the chief of immunology from
3 Boston's Children's Hospital. They will include the chief
4 of oncology, which is the study of cancer, from Chicago's
5 Children's Hospital, and many other experts. And what these
6 experts will say is that although there is much that we do
7 not know about the origins of cancer and leukemia, there
8 actually is much that we have learned in the last 20 years.
9 And much of what we have learned will be demonstrated to
10 you in the courtroom.

11 And what that evidence tells is not only
12 is there no evidence that TCE and Perc cause leukemia, but
13 there is evidence that TCE and Perc do not cause leukemia.
14 Epidemiological studies, animal testing, studies of what
15 happens to a product when it gets into our body, the way
16 a chemical metabolizes, and studies, case studies in the
17 medical literature and in the experience of these doctors
18 treating patients has demonstrated to them that there is
19 no connection between TCE, Perc and leukemia. In
20 epidemiology, a study of that demonstrates that within the
21 United States, there are many area where people have had
22 a far greater exposure to TCE and Perc than the plaintiffs
23 have alleged in this case, and there is no higher incidence
24 of cancer or leukemia. Studies in animals demonstrate that
25 when animals are given massive injections of TCE and Perc,

1 the only cancers that have been formed have been formed in
2 particular strains of mice and rats which are known to have
3 a susceptibility to cancer. As far as metabolism is
4 concerned, those studies demonstrate that when TCE and Perc
5 come into the body, they are soon metabolized into a
6 substance which is not only harmless, but it is a substance
7 that today is administered to children as a sedative.
8 And studies, case studies and examination of medical
9 literature and the experience that these doctors have had
10 in treating leukemic children demonstrates that there is
11 no connection between TCE, Perc and leukemia.

12 Nor, ladies and gentlemen, is there any
13 scientific or medical evidence which connects TCE or Perc
14 with any of the other illnesses that the plaintiffs have
15 alleged in this case, such as heart arrhythmia, skin rashes,
16 so-called immune dysfunction, and depression.

17 The high incidence of leukemia in Woburn
18 did not end when Wells G and H were closed in 1979. The
19 incidence of childhood leukemia in Woburn is greater after
20 Wells G and H closed than it was before, and it involves
21 people who had no exposure to Wells G and H.

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1 So my first point is that the well water was
2 contaminated by a polluted river, that W. R. Grace did not
3 contaminate the well water, and that TCE and Perc did not
4 cause the plaintiffs' injury.

5 My fourth and final point is that nothing
6 that went on at the Cryovac site, the Grace site in Woburn,
7 caused injury to any person, and there was no reason to
8 think that it would.

9 Our facility was built in 1960. It is
10 located in an industrial zone of Woburn. It employs
11 about a hundred people, most of whom or many of whom live
12 with their families in Woburn. The business of the
13 company is to design and assemble a food packaging machine.
14 It is the machine that packages the turkey or other kinds
15 of things you find in a supermarket. It is not a chemical
16 company. Our facility in Woburn manufactures no chemicals.

17 In the course of the assembly of the food
18 packaging machine, we use certain liquids. We use solvents
19 because we have to clean the equipment as the equipment is
20 assembled, because all this equipment is manufactured under
21 the supervision of the Department of Agriculture and the
22 Food and Drug Administration. We also use a liquid to
23 cool the cutting edge of a machine that cuts sheet metal
24 which is used in the assembly of these food packaging machines.

25 Now, most of these liquids are highly volatile.

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1 That means they evaporate very quickly while they are
2 being used. Ninety percent of trichloroethylene, TCE,
3 evaporates while it is being used. You will hear in this
4 case a great deal of conflicting evidence over how much of
5 these liquids W. R. Grace purchased, when did they purchase
6 these liquids, and how much were left over after W. R.
7 Grace had used these liquids. Almost all of the evidence on
8 these subjects come from the recollection of our employees,
9 and this goes back over 10 or 20 years. But the important
10 thing for you to keep in mind is whether you conclude that
11 we had 20 gallons of this liquid left over each year to
12 dispose of or whether you conclude we had 30 gallons of this
13 liquid each year or 40 or even 50 gallons of this liquid
14 left over each year, none of these chemicals that were
15 disposed of on our site could have reached Wells G and H
16 while those wells were still open.

17 Now, Mr. Schlichtmann has mentioned to you
18 a pit, and he mentioned to you that barrels at some point were
19 placed in a pit at our facility in 1974, when we were doing
20 a new addition, and then covered up. No one contends in
21 this lawsuit that any material that was placed in that
22 pit ever reached Wells G and H. That is simply not an issue
23 in this litigation.

24 Our employees will testify that they took
25 the leftover liquids, which were, incidentally, an incidental

1 part of our manufacturing process, that they took these
2 leftover liquids and they disposed of them by either putting
3 them into the sewer drain, where they would get into the
4 sewer system of the city, or they would take them and put
5 them in barrels that were located around particular places
6 around the plant, or they would take them to the back of the
7 facility where they would spread them on the ground to further
8 evaporate.

9 Our employees did not know that Wells G and H
10 even existed. When they took the materials to the back of
11 the property and laid it on the ground or put it in a ditch,
12 they truly believed that those materials would evaporate.
13 That disposal method was a method that was recommended by
14 the manufacturer of one of these liquids from whom Grace
15 purchased the property. And that disposal method, in the
16 1960s and 1970s was the accepted and standard method in
17 American industry to dispose of small quantities of these
18 kinds of solvents. And, therefore, ladies and gentlemen,
19 W. R. Grace did not do anything at that facility which
20 caused injury to anyone or which could have been expected to.
21 I want to say one word, if I can, about the particular
22 liquids involved. At this point in time, TCE was a common
23 medicinal and household product. TCE or trichloroethylene
24 was actually used in childbirth as anesthesia for mothers,
25 and it is still so used in many places. TCE, at this time,

1 was used as a food processor, TCE was used as a solvent
2 in all kinds of cleaners and waxes, and TCE, interestingly
3 enough, was the common chemical that you would place in
4 your septic system in your house to clean through the septic
5 system.

6 Perc, of course, is now and has always
7 been used in the cleaning business, still used in the dry-
8 cleaning business, and, at this period of time, drinking
9 Perc was actually a recommended way to treat certain forms
10 of intestinal disorders. There were simply no reasons for
11 our employees to think that when they took these materials
12 to the back of the property and they laid it on the ground
13 and they believed that the chemicals would continue to
14 evaporate, there was simply no reason for these people to
15 believe that these properties, these chemicals, could ever
16 do harm to any person.

17 I have said to you that the evidence W. R.
18 Grace will present will establish that the well water was
19 contaminated by a polluted river, and I have said to you
20 that W. R. Grace did not contaminate the well water. I have
21 also said that TCE and Perc did not cause the plaintiffs'
22 injuries, and, finally, that there was nothing that W. R.
23 Grace did at its Cryovac facility which injured any person,
24 nor was there any reason to think that it would.

25 I thank you very much. Thank you, your Honor.

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THE COURT: All right.

Now, that gives you an idea of the posture of the parties in the case. Tomorrow we will start off at 9 o'clock, go right directly to the jury room here that will be opened up in advance of 9 o'clock. I think it is inevitable that to start with the day the lawyers will have some matter to bring to me, so there may be a minute or two while we straighten that out, and then, as soon as we are ready to go, we will press the buzzer. When you hear the buzzer, line up as we talked about and I will see you here in the room. Thank you very much.

(Whereupon, the first day of trial was concluded.)

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