A Civil Action: A telling saga of cancer and the courts

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A Civil Action, by Jonathan Harr, Vintage Books, New York, 1996

This book, though written as a gripping novel, is a true story. It chronicles the tortured history of a court case mounted against three major US companies. They were accused of dumping poisonous chemicals that caused leukaemia deaths and severe health problems among children and entire families in the town of Woburn, Massachusetts, just north of Boston.

From the late 1960s to the early 1980s, 12 children contracted leukaemia in the town of 36,000 people. Eight lived within a half mile radius of each other, six of them in one East Woburn neighbourhood where less than 200 families resided.

Harr relates the painful and horrible deaths of a number of the victims, as they bleed profusely from their noses and mouths, debilitated by intense pain and fever.

Then medical records began to reveal more widespread problems. During the mid-1970s cancer deaths in Woburn increased by 17 percent. By December 1979 the local media was calling for answers—articles that were denounced by city officials as "scare-mongering" and a threat to investment in the area.

The city had opened a new water well in November 1964 near an industrial park. Residents complained of "putrid, ill-smelling and foul water," but the city refused to shut down the contaminated water source until 1979. Traces of the cancer-causing chemical trichloroethylene (TCE) were later found in the water.

A half-buried lagoon polluted with toxic chemicals was also discovered in 1979. Arsenic, chromium, lead and other heavy metals had saturated the water, as had animal wastes—by-products of leather production.

In January 1981, five days after the death of another young leukaemia victim, the Centers for Disease Control and the Department of Public Health released a report showing that the leukaemia rate in east Woburn was at least seven times higher than normal.

Despite the presence of three industrial plants nearby—a manufacturing facility operated by the chemical giant W.R. Grace, a tannery owned by the consumer goods conglomerate Beatrice Foods, and a factory run by Unifirst—the Environmental Protection Agency and other government investigators declared that nothing could be proved.

Prompted by a local church minister, a number of the families sought to pursue legal action. The focus of the book is Jan Schlichtmann, a flamboyant Porsche-driving young lawyer looking to make a name for himself, and millions of dollars, by taking on difficult cases against corporate giants.

In May 1982, after three years of inactivity, Schlichtmann finally filed a compensation case against the companies on the grounds of willful and gross negligence in poisoning the town's water supply. Even then, the future of the case was uncertain. His associates in a fledgling and impoverished law firm argued there was little chance of winning, and predicted financial disaster.

A long and arduous legal process followed. The judge assigned to the case had a backlog of over 500 cases. For the EPA, Woburn was just 39th on a list of 418 contaminated sites to be dealt with. The three companies each hired a high-powered team of corporate lawyers who employed legal manoeuvres, technicalities and loopholes to prevent the case from going to trial.

Meanwhile, the evidence mounted. In February 1984, two professors from the Harvard School of Public Health released to a public meeting of 300 residents the results of a three-year study of leukaemia in Woburn. It was based on extensive medical analyses of every pregnancy and childbirth in the town between 1960 and 1982—over 5,000 births in total.

"The combined weight of evidence strongly suggests that water from Wells G and H is linked to a variety of adverse health affects," they concluded. They listed allergies, skin afflictions like eczema, respiratory disorders such as chronic bronchitis, asthma and pneumonia, congenital defects to eyes, ears, kidneys and urinary tracts, birth defects like cleft palates and spina bifida, as well as Down Syndrome. The list also included childhood leukemia. This was the first time the disease was linked by overwhelming evidence to environmental factors.

Schlichtmann avoided financial collapse by engineering a $1 million settlement with Unifirst. He used the money to finance the initial stages of the case against Grace and Beatrice. But costs—legal, forensic and medical—escalated. By mid-1985, with the actual trial still five months away, Schlichtmann had

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already spent another half million dollars.

Increasingly, the primary issue became cash. To borrow more money for the case the Woburn lawyers had to present bankers with estimates of the compensation they expected the judge to award. To increase the monetary "value" of the case, they had to calculate the worth of a dead child as opposed to an adult, and quantify in dollars each victim's suffering.

Workers and victims

Some of the most crucial evidence to emerge came from workers at Grace and Beatrice. They defied enormous pressure from the companies to testify about the dumping of poisonous wastes. Some were originally witnesses for their employers, but revealed that they and their families had suffered cancers, miscarriages, seizures and birth defects. "I do believe I'm on the wrong side of this whole thing," one said. Workers and residents discovered that they were victims alike.

As more medical and scientific expertise was brought forward, it became clear that a range of noxious chemicals made their victims vulnerable to leukaemia and cancer by attacking their immune systems. Chemicals not previously known to be causes of leukaemia were now proven to be linked to it.

The case began to achieve national recognition. Articles appeared in the Washington Post, the New York Times, Time, Newsweek and The New Republic. When the trial finally began in a packed court house, Harr comments: "The only faces missing from this crowd were those who arguably had the greatest interest in the progress of the case." He was referring to the families.

As the case proceeded, the victims' families were more and more sidelined. Among the most moving passages of the book are those that relate to a meeting between Schlichtmann and family members at Woburn to discuss a cash settlement with Grace.

Schlichtmann, by now facing personal bankruptcy, was moving toward accepting an offer from Grace. But among the parents the overwhelming sentiment was that establishing the truth and placing it on the public record was more important than any payout.

Harr quotes one father: "A settlement is one thing, but I'm not willing to throw out the verdict in order to settle. They're guilty of polluting. My child died from their stupidity. I didn't get into this for the money. I got into this because I want to find them guilty for what they did. I want the world to know that."

Later, one of the mothers spoke up. "I was doing this for my baby, for Jimmy, it started off in a pure manner. We didn't want what happened to us to happen to anyone else. But by the time I got through dealing with Jan (Schlichtmann), I felt violated. The lawsuit made me feel dirty."

Despite these instructions, Schlichtmann and his partners settled the case soon after for $8 million. By the time costs of nearly $5 million were deducted, each family received several hundred thousand dollars. In return, no finding was recorded against Grace or Beatrice. For them, the payout was a pittance. W.R. Grace's annual turnover exceeded $5 billion and Beatrice's was $436 million.

For Schlichtmann personally the settlement came too late. After spending nine years on the case he was financially ruined. His car and home were repossessed. He spent the last period of the case living in his firm's office. Unable to pay debts of over $1 million, he ended up leaving the legal profession.

In sum, after a decade-long legal action, costing a total of $13 million in legal fees and scientific and medical investigations, the polluting companies escaped virtually scot-free, through a combination of legal chicanery and sheer financial clout. Evidence compiled by some of the finest medical and geological brains in the US counted for little in the final outcome. It is a telling saga of the class role of the courts.

More can be said, both about the book and its hero. Despite the limitations of Schlichtmann, he pursued the case at great personal and financial cost. As for the book, it is written so meticulously that it must have taken Harr almost a decade to complete—following the case intimately, conducting his own research and then writing. Both the author and his protagonist point to the emergence of more critical and socially-concerned professional layers.

Moreover, Harr's book was awarded the 1995 National Book Critics Circle Award and became a best seller in the US. That indicates wider popular concern with the issues at stake.

Finally, the Woburn case sheds fresh light on the significance of the Workers Inquiry into the Wollongong Leukaemia and Cancer Crisis, initiated by the Socialist Equality Party in Australia in 1996. It provides powerful confirmation of the Workers Inquiry's findings that industrial pollution, containing not only known carcinogens (such as benzene), but other toxins as well, causes leukaemia and cancer deaths.

Whereas the Woburn families were straitjacketed by the legal system, the Workers Inquiry became a vehicle through which workers, residents and victims could begin to develop a political movement in the working class—outside the official framework of business, government and the trade unions—against the profit system which is responsible for such suffering.

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