

- TAPE 1 AUDIO TRANSCRIPTION -

***LESSONS FROM WOBURN:
THE UNTOLD STORIES***

A "VIDEO" COMPANION TO A CIVIL ACTION

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FILMS FOR JUSTICE

SEATTLE UNIVERSITY SCHOOL OF LAW

WITH

**THE BERKMAN CENTER FOR INTERNET
AND SOCIETY AT HARVARD LAW SCHOOL**

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“Lessons From Woburn: The Untold Stories”
A Films for Justice Production

*This videotape is dedicated
to the Woburn families
who persevered for a
cleaner and safer environment
for themselves and those
that share the water, earth, and sky.*

“Lessons From Woburn: The Untold Stories”

A Film for Justice Production

27 Minutes, 1/26/99

Audio Transcription

Definition of Parties

AA	=	Anne Anderson
CN	=	Charles Nesson
DR	=	Donna Robbins
JJ	=	Jennifer James
JC	=	Jeanne Coulsey
JF	=	Jerome Facher
JH	=	Jonathan Harr
JS	=	Jan Schlichtmann
MB	=	Marilyn Berger
MK	=	Michael Keating
RR	=	Robbie Robbins
BC	=	Bill Cheeseman
WS	=	The Honorable Walter J. Skinner

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FILMS FOR JUSTICE

**Seattle University
SCHOOL OF LAW**

TOGETHER WITH THE

**Berkman Center for Internet and Society
at Harvard Law School**

PRESENTS

**Lessons from Woburn:
THE UNTOLD STORIES**
(Total Time: 27 minutes)

Introduction (1 minute)

DR: I guess I always had a gut feeling that Robby wasn't going to make it, even though the doctors had told me in the beginning that he had, you know, a really good chance.

RR: Next week, um, I needed to go into the hospital and get a bone marrow.

JS: The purpose of the lawsuit was to declare that what happened to them was wrong -- that treating the community (the community) like a toilet was wrong.

JF: This case was about money, about extracting money, whether you call it sending messages or whether you call it looking for damages, the plaintiff was after big money.

WS: So to the extent that there wasn't a complete exploration of the problems raised by this case, probably justice was not done.

AA: And every birthday, or was it his last, or will we have another? And you put away clothes for a season, and hope you take it out again.

Time Code
(1 minute)

FILMS FOR JUSTICE
End of Introduction

Part One: *What Is The Case About?*

JJ: This videotape explores how the story of the Woburn families was transformed by the legal process. First, the story was transformed from a search for the truth to a lawsuit seeking a remedy. Second, the family story was transformed by a key ruling made by Judge Skinner. Third, the story of the Woburn families was transformed by the very nature of the judicial system. The three segments that follow illustrate these transformations. The first segment asks: What were the families seeking through this lawsuit? Answers or monetary compensation? What was the case really about?

AA: Well, Jimmy was diagnosed in January of 1972 and that was pretty much the beginning. When I brought him home from the hospital, a neighbor came over, and in a way, too, I think, helped me get through this. She spoke about two other children in the neighborhood that I was not aware of. And they also had leukemia. And at the time, I just thought, well, gee, that's really unusual, because in all my life until then I had only known a child (one child) with leukemia, so I thought that was very strange.

DR: This goes back to 1976 when my son Robby was diagnosed with leukemia. And Anne's son and my son both, you know, we all belonged to the same church. And um, you know she was very concerned about a cluster of children in her neighborhood and how they got leukemia. And she had done some research, you know, -- all the names and people.

AA: And at the same time I was taking care of the family, and I was taking care of Jimmy, who was really actively sick throughout his illness, which was nine years, and so I couldn't devote too much time or energy to it, and I wasn't getting any attention. It was very frustrating. I had taken it to the hospital, to his doctor, to nurses. And, "Don't you think this is strange, don't you think this is unusual?" And it was like everything fell on deaf ears.

DR: I could sort of see that as far as the state was concerned, we weren't going to get anywhere too quickly to find out, you know, what companies were responsible. And I had received a phone call from one of the lawyers that had handled my divorce, you know. And he had mentioned to me did I ever think about suing these companies, but you know, finding out who was responsible?

AA: I've realized that in order to change anything that it's necessary, unfortunately, to sue people. Because if people have to pay for doing wrong things and misdeeds, then that's the only way situations are corrected.

JS: The purpose of the lawsuit was to declare that what happened to them was wrong; that treating the community like a toilet was wrong; that these chemicals are bad; that they can make you sick and they can kill you; that dumping them without thinking about the community is wrong and that it was important to prove that it was wrong and that these chemicals are bad for you because it was a threat not only to the Woburn community, but to every community.

CN: The idea was to take their story and project it as quintessential in some way of the problems of polluting an environment and then covering it up.

MK: In my opinion, the major mistake the plaintiffs made (and when I say plaintiffs, I mean their attorneys), was not distinguishing between a case and a cause. They believed they had a cause, and, I think, ignored the fact that they had a case. A case differs from a cause because a case is a situation where you represent real people within a process which has certain rules, and, um, you have to adapt to those rules to be successful. A cause is something entirely, entirely different.

JS: Woburn was definitely a case that was a cause for me. No question about it. It was political. And that's why I think most lawyers just didn't want to get involved with it, because they understood that this was engaging in a political campaign. You are trying to change political perceptions, economic perceptions. There were economic interests, great economic interests at stake. And so, absolutely, it was a cause.

JF: This case was about money. It was about extracting money. Whether you call it sending messages or whether you call it looking for damages, the plaintiff was after big money.

AA: In a lot of respects, the litigation was a, was a kind of like a, a black mark, not that it should have been, but that people view it as, "Oh, they are just looking for the money."

DR: You know, money is never going to bring our kids back. W. R. Grace, I can tell you, bought this house, but I would, and I've told everybody this that I've ever interviewed with, I would rather be living on the street and have my son back. You know, the money is nothing. It makes you comfortable, but it doesn't, you know, give you the happiness that you could have if you still had your kids.

AA: I guess I'm just sorry that the children, you know, that the suffering is taking a back seat; that the whole reason for the litigation process was them and what happened to them, and that isn't as important anymore as what it brought us to, which was the trial and the attorney. And, it was, it was purest before it became a part of the litigation.

CN: Anne Anderson, I think, was never in this case for money. What Anne Anderson wanted was some recognition that she'd been wronged. And some recognition too for the fact that it was her energy that propelled this story from just an injury to a family that nobody cares about to what's now becoming a major, national, educational institution. I think Anne Anderson wanted to build a monument to her son. She wanted him to have lived for something. I think she's won.

Time Code
(7 Minutes)

FILMS FOR JUSTICE
End of First Segment

Part Two: *Was Bifurcation Fair?*

JJ: This second segment examines a key ruling made by Judge Skinner. The judge ruled that the trial would proceed in phases, a concept known as bifurcation. The first phase required that the plaintiffs prove that toxic chemicals had traveled from the defendants' property through the ground water to the Woburn City wells. This proof relied not on the testimony of the families, but rather on expert witnesses. The trial never proceeded beyond this phase. Did splitting the case into these phases mean that the plaintiff's never truly had their day in court? If so, is bifurcation fair?

CN: The story is just an incredibly powerful story. It was the story of people, relatively poor people, not wealthy people, who move to the suburbs and buy a house and kind of start pursuing the American dream, and they are hard working, and they have families, and they are just doing the best they can. And they get just cut off at the knees by this pollution of their water supply.

BC: The most overwhelming concern, just from a trial point of view, is the impact that the plaintiffs themselves would have on the jury when the case got to that point. The, we knew the stories would be poignant. Everybody felt sympathy for the plaintiffs.

AA: Some children, when they are diagnosed, do pretty well. Jimmy just never did. He was violently sick from the medication. His blood count was so low that he picked up, I used to swear that anybody who walked by the house that coughed there was a problem. He had numerous pneumonias and bronchitis and flus, and he almost died from chicken pox at the time.

DR: I guess I always had a gut feeling that Robby wasn't going to make it, even though the doctors had told me in the beginning that he had, you know, a really good chance. But the fact that he had the bone pain wasn't good. It took three (3) months, from July to October, to diagnose it, and, um, you know, he had a lot of severe pain during that time.

RR: Next week I need to go into the hospital and, um, get a bone marrow, and if it says it's okay, I can get near some kids, I think, um, and play with it; and if it isn't okay, I'll have to get the IV again and sleep overnight and go home the next day.

AA: Every Christmas was a triumph because we had come through another Christmas. And every birthday, was it his last? Or would we have another? And you put away clothes for a season and hope you take it out again. And then there's a season you don't. And they are still down there.

MK: We could not permit the plaintiffs to get on the witness stand while the hydrogeological phase was being considered by the jury because their testimony would have been so devastating to Grace and to Beatrice that the jurors would have been, it

would have been impossible for the jurors to focus on the scientific issues.

JS: I think it's insulting, and I think it does a total disservice to our system of justice and to the families to suggest that -- and insults our case -- to suggest that somehow we were going to win that case or that we were going to present our case you know and fool everybody. You know, Anne Anderson was going to come in and cry over the death of her son, and somehow the jury would be just so overwhelmed by that that they would say, "Oh the companies were responsible." Every day of the week juries hear the story, cry, dry their eyes and say, "No, you don't have a case." And that is as it should be.

JF: When the judge asked us how to proceed in trying this huge cumbersome case, it occurred to me that the logical way to proceed was to deal with the issues which affected everybody first. So that if there were no chemicals used, or no chemicals disposed of, or the ground water didn't get to the wells, that would be the end of the case. That made common sense.

JS: I certainly had discussions with Jerry Facher in which he made it clear that he was going to do all he could to make sure that the case was tried on his terms. He made that very, very clear to me. And that he also made it very, very clear in hearings with the judge.

JF: I did say to him, "Your clients will never see the light of day," meaning they will never testify. I had no idea how I was going to back that up, but I told him that, and he should have believed me.

WS: The plaintiffs wanted to put the, the plaintiffs' lawyers wanted to put the plaintiffs themselves on the stand at the very outset to talk about the leukemia and the deaths of their children, and so forth. I felt this was just too heavy a type of evidence. And if ... people would feel terrible about the death of children. It is a very hard thing to deal with, and I think if the jury had heard about all of that, they knew about it in a general way, but they didn't hear it all in detail. If they had, they would have had a very difficult time dealing objectively with the technical evidence that we got into.

JC: If Judge Skinner had let us hear the plaintiffs and the science part, yes, I think it would ... it would have changed while you were listening. But I think when you get in to discuss it, I think we were all old enough that we could maybe divide the emotional from the other and rationalize.

DR: Not having our chance to testify in court, you know, really bothered everybody. That was one of the main things that we wanted to do even though it scared us all half to death.

CN: The story doesn't start with the dumping of the stuff in the ground. The story, that's the defendants' story. The plaintiffs' story starts with the kids getting leukemia and tracking to find out where it came from. We were forced into a frame by the bifurcation that made us tell the defendants' story. And it just was a very hard way to go about it.

JS: Judge Skinner's rulings about how the case was to come in segments. You know, it wasn't even bifurcation, it was quintrification. I mean if we went through all the way to the end it would have been like I think it was five (5) phases. He called them phases, but they were, you know, phases that were, you know, calculated to keep the heart and the soul and the blood and the sinew of the case out of the courtroom.

JH: It was legitimate of Skinner to do that. I mean you can't fault him for trying to make comprehensible a case that was going to be long, very complicated, and have lots and lots of witnesses. There were other alternatives, and he might have taken one of those. This was the plan he finally adopted, was a plan very much like the one suggested by Jerry Facher, the counsel for Beatrice Foods. I don't, so I don't, I can't fault Skinner for having bifurcated the trial.

JF: Incidentally, the plaintiff was not terribly concerned about the bifurcation, about the idea. I don't think it represented a terrible threat. At least, they didn't consider it. It was never a subject of an appeal. Nobody ever complained about it. It wasn't taken up to the court of appeals, and today it is quite a routine thing for judges to split cases--in the interest of efficient management -- to split cases like that.

Time Code
(9 Minutes)

FILMS FOR JUSTICE
End of Second Segment

Part Three: *Did the Truth Come Out In Trial?*

JJ: This last segment shows how the story of the Woburn families was transformed by the very nature of the judicial system. Is the system a good vehicle for finding the truth as the families originally thought? Or is the system better suited to resolving controversy? Is finding the truth possible in a trial? These questions are prompted by watching the participants in the Woburn case tell their stories. The participants express remarkably different views of the judicial system. They reinforce the notion that each of us must decide what purpose the judicial system should serve, and whether that purpose was served in Woburn.

JF: What came out at trial were the facts that closely resembled the truth, if you will, as you could get. I mean a trial is a very difficult place for discovering absolute truth because there are rules of evidence that preclude lots of things that people would like to know about witnesses, for example. You'd like to know lots of things about witnesses before you believe them. Do they beat their wives, what clubs do they belong to, what kind of things they've done before they've testified. None of that is relevant and regularly gets excluded. So, I don't think you can talk about trials in terms of truth. You talk about trials in terms of resolving the controversy.

MB: Do you think the truth came out in the trial?

DR: No, it never got to that point.

MB: Why not?

DR: Because, you know, the trial was set up in three different stages, you know, the families were never able to get their side of the story into the courtroom, so I don't think anybody heard the truth of it all.

JS: I engaged in behavior, litigation encouraged behavior, and they engaged in behavior which was antithetical to truth finding, you know, or truth determining. It was a war. And the first thing that is a casualty in a war is the truth.

MK: I think as far as whether the truth came out at the trial, I think that the evidence, at least from Grace, about what happened at the Grace facility came out and that it was truthful. I think that the evidence about the movement of groundwater we believe to be truthful, but we are dealing not in any area that's susceptible to real clear, empirical proof. When Jack Guswa says that trichloroethylene moves through bedrock at a certain rate, and the this and the that, I think he is using the best scientific evidence available, but it is hardly the kind of evidence that one could say is absolutely true or absolutely not true. I think what I was confident about, however, was that we didn't dissemble at all.

JF: Do I think that the truth, insofar as is possible in a trial, came out? Yes. And do I think that the jury was able to distinguish between the facts as they affected one defendant and the facts as they affected another defendant? Yes, I think they did. Do I think the jury was able to understand the case? Yes, I think they were.

JC: I don't think the truth came out at the trial. And the only reason I did that is what I learned afterwards, when I came home. My husband had saved a lot of the papers, and he would tell me different things that came on there. And it kind of makes you think, you know, was I right or was I wrong?

JH: I don't think that the truth came out at the trial. I don't think that to this day we know the extent of John J. Riley's dumping on the 15 acres. And we don't know that because of documents that have been suppressed. I'm not so sure that these cases are, end up in searches for the truth, really. The Judge said something very interesting at one point during the post trial appeal process. Schlichtmann would hammer away on the counsel table and talk about truth and justice for his clients. And the judge would say, "Truth? You know, I can't possibly hope to know the truth. I have two sides presenting the exactly opposite versions of the truth. And justice? As far as that is concerned, that is in the eye of the beholder. I don't want to talk about that stuff. The business of civil cases is to resolve disputes."

JS: A lot of the truth did not come out at trial, but that doesn't mean we didn't uncover the truth. Because the truth wasn't allowed to come into the courtroom doesn't mean we didn't have all that truth out in the hallway. You know, we uncovered truths that were published in scientific and medical journals. We had truths that we uncovered that the EPA acknowledged years later. They said, "Yes the families were right. These companies were responsible. And now they are part of a \$70 million, 60-year clean-up."

MB: Does it trouble you at all, your honor, that the EPA conclusion was different than what happened at the trial?

WS: No. For the reasons that I just said. They were dealing with perhaps different evidence, though I don't know. But they were certainly dealing with it in a different way.

MB: In that sense, did the legal system actually fail to produce the truth?

WS: Well, assuming that what the EPA found was true, yes. Because it depends on the evidence that is presented in the course of a trial. If the evidence doesn't cut it, and you come up with a different result from what the EPA has found, and you assume that the EPA was correct, then it didn't produce the truth, that's right.

JF: The truth is at the bottom of the bottomless pit. I'm sure that is not original with me, though, it sounds terribly profound.

Time Code
(7 Minutes)

FILMS FOR JUSTICE
End of Third Segment

CREDITS

Seattle University School of Law

A Films for Justice Production

“Lessons From Woburn: The Untold Stories”

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