

## **The Third Branch v. *Citizens United*: The Root of Evil**

### **Jan Schlichtmann**

**Dr. Gayle Hutchinson, Dean of the CSU, Chico School of Behavioral Sciences:** Thank you, Julie, and thank you everyone. Good afternoon. It's a special day here at Chico State today. Jan Schlichtmann has flown all the way from Boston to be with us here this afternoon. In fact, he hails from the north shore, which is one of the most beautiful spots in all of Massachusetts. If you ever have an opportunity you should either Google it or visit it in person. Mr. Schlichtmann is one of the nation's most visible and accomplished plaintiff attorneys. He graduated Phi Beta Kappa in 1973 from the University of Massachusetts-Amherst, which happens to be my alma mater, and in 1977 he earned his law degree from Cornell. While at law school, he clerked for the United States Senate Judiciary Committee and after graduation joined the staff of the US House Special Select Committee on [inaudible] and special counsel. Mr. Schlichtmann vaulted into national prominence in the 1980's for the representation of eight Woburn, Massachusetts, families against W.R. Grace Company and Beatrice Foods for the contamination of the city's water supply. And I happened to be in graduate school at that time and am very familiar with this case as it was published and in the media. This case is chronicled in Jonathan Harr's best-selling non-fiction book, "A Civil Action," and then in the movie by the same name. In addition to this book and the movie, Schlichtmann's groundbreaking work in the Woburn case has been the subject of a number of national and international television and radio shows, press reports, and magazine stories, including "60 Minutes" and "Nova," as well as articles in legal and scientific journals and books. Today Mr. Schlichtmann specializes in the area of complex civil litigation including consumer, environmental, product, toxic and mass [inaudible] litigation. He is one of the nation's leading environmental lawyers and opponents of corporate wrong doing and unchecked [inaudible]. It is particularly fitting to host him at CSU, Chico because of our reputation as a leading green university. He is a strong and courageous voice for sustainability and green causes. Please join me in welcoming Jan Schlichtmann to CSU, Chico.

[ Applause ]

**Mr. Jan Schlichtmann:** Thank you so much. Thank you. Well, thank you very much. Thank you, Dean, and am I all right on the, I'm being heard all right? Everybody can hear me? Yes, all right. Let's see if you're going to be happy with what I have to say. [laughter] Thank you so much for inviting me here. I've never been in this neck of the woods. Really, really beautiful. You have a spot here in which it appears that you and nature embrace each other and it's really quite beautiful with that creek running through it and the trees. You all seem to be living very well together. It's very nice. A little something for all the rest of us to live up to. I've heard from Professor Gibson, Allen has really been quite a gracious host and he's told me about the commitment of this place to each other and to the environment. I think you all should take great, great pride in that and that you're pioneers really in sustainability. Boy, what a beautiful word, sustainability. It's a great metaphor, it's a great concept and all of you should take great pride. So I'm honored really to come and chat with you.

We thought we would, you know, I went through this experience and I know you really don't want to hear about that. You want to know what it's like to have John Travolta play you. [laughter] That's really why you invited me here. I know. I get asked that question a lot. My mother, I thought, had the best answer to that question. She was asked by a woman who was little and old and Jewish. She said "Travolta? Wow. You have a handsome Italian boy playing a nice Jewish boy. I mean what's not to like?"

It could have been Danny DeVito or Joe Pesci. [laughter]" So, as one of the, I can't complain. He's a great dancer and one of the big liabilities in the book by Jonathan Harr, who wrote the book, was that I was a lousy dancer, but when they chose Travolta to play me, I thought that was the answer to that liable that I'm actually a fabulous dancer. Don't believe what you read in books, but the book is great.

We went through this experience, you know, my partners and I, and joined the families on this journey. And we were very fortunate to have Jonathan Harr chronicle it so well, to get into the belly of the beast. And it made for a great book and a pretty good movie. And, of course, really the great gift that the families gave to the world was the sharing of their story, and through the book and the movie it gets to be shared with millions of people around the world. And that's a great satisfaction. And one of the great things I have is to be invited by folks like yourself to come and talk about "maybe you learn something." Would you mind sharing what you learned?

I have to tell you it's been quite a journey. When I come to a place like this, you know, I think back when I was your age, your age, not my age, and I think about sitting there and I think about that time it came at a place like this. There was that time where some folks decided to do something that nobody really ever done before – to take a whole day and think about something that we really hadn't thought about; the earth. And they invited a few of their closest friends and on that day 20 million came together on one day to think about the earth. And then all of these minds in one day, in one time, thinking about the earth and our relationship to the earth and what we're doing to the earth, what the earth might be doing back to us and then the brains they caught on fire. They got all energized, you know, and they left places like this and they went out and they got other brains and other minds all energized and a marvelous, incredible thing happened. They went and they got other folks to get excited and to pass laws with really good names that did really good things. Clear Water Act and the Clean Air Act and then they got to, well, then they saw that they got an administration to change that nobody ever thought would change and then they filed those lawsuits to do good things. I remember that time and how exciting that time was, you know, and it started when the metaphors in our mind were rivers that burned. Smoke stacks that belched out and the litter on the countryside and on the beaches that would bring a tear, you know, to the cheek of a Native American. They caught everybody's imagination and made us think about what we were doing to our planet.

Then what happened was the laws of human physics kicked in. I've learned about these laws since then, but that law, the laws of human physics kicked in. You see, and those who didn't like these new laws, they filed their lawsuits. And those who didn't like the lawsuits filed new laws. And those who didn't like the administration changed the administration. Now here we are. It's the beginning of the 21st Century and we have to ask the question. what's next? Where are we? How did we get here? And what are we going to do to be able to get to the end of this century, and what are we going to look like when and if we get there? This question about where we are and where we want to go and how are we going to get there, you know, is a challenge.

And I'm fortunate that people who read the book or see the movie or hear the story they say, "Would you come and talk to us?" They say things like, gee, you know, it's really, really bad what the environment is doing to us or they'll say, gee, it's really bad what we're doing to the environment and say, hey, you're that lawyer, you're that lawyer. Hey, you, I know you, yeah, you're that lawyer that represented those folks and you sued those corporations. Hey, is there a lawsuit we could file to change things? Or no, no, wait a minute, you're a lawyer, you think like a lawyer. How about a law? Maybe you could give us a law that'll get us out of this mess. And I have to tell you if I was asked that question when

I was younger and the hair was darker – I had more of it – I would have had a ready answer. I would have said it's this law, it's this regulation, it's this policy, it's this lawsuit.

But I have to tell you I went through an experience at which that's not really, I think, a satisfying answer to where we are and where we're going to go and how we're going to get there. You know it's – well, I used to think like a lawyer and this book that Jonathan Harr wrote, I think it depicts the journey really well. You see, when it started out, it was real simple in my mind. You see, when my client came into the office and they told me about power, you know, and how power is trying to destroy them I said, hey, no problem. Why, I'll just grab all the power that law can give you, and law can give you a lot of power, and I will go and I'll destroy the power trying to destroy you. Ha ha. I learned something about the law of human physics. Power, destroy power? It's a physical impossibility. Well, wait a minute, no, no, problem, you see you know, they come in and they're being punished by power. I'll just take all the power that the law gives you, it gives you a lot of power and I will punish power that's punishing my client. I went through an experience and I learned something. Punished power always seeks its revenge. No, no, no, well, no problem, you see they're coming in to me, they're abused by power. I'll take all the power the law gives me and I will abuse power. Abuse power, me? I became confused. I'm a lawyer. If I can't destroy something or punish something or abuse something, why, I can't be a lawyer, I can't do this thing. And I became very, very confused, I have to tell you and I, you know, I went away as far as you can go in this country and still be in this country, Hawaii – not a bad place to go if you're having a midlife crisis. And when you have yours I urge you to go there.

But I eventually had to crawl back and think about things and now I'm beginning to think as I stumbled back and started to be a lawyer. I found myself doing things and thinking differently. And I began to think that maybe it's not about destroying or punishing or abusing. Maybe it's about something else. Maybe the law's purpose is to do something else. Maybe, and I had this thought I want to share it with you, and it took me a little while to figure it out, but maybe it's about civilizing power. Civilizing power. What a thought. I'd like to share just a little bit with you about where I was then and where I am now and how I got to this kind of thinking. Because this thinking about using law to civilize power has changed me as a lawyer. It's made it very hard for me to be a lawyer, to practice law like a lawyer like I was taught, and I want to kind of share it with you.

It's kind of disturbed me and it's kind of forced me to kind of look back into our history. You know, those decisions that we made when we had that time when we fought a revolution and said, no, no, we don't want, we don't to have tyrannical power; we want to have a different kind of power. And we made these choices and it forced me to go back and kind of do that kind of thinking again. You know, here we are 224 years later after some folks thought that our constitutional form with its three different branches and the Article 3 institution in particular, which I spent a lot of time practicing in...and its maybe time to think about the decisions we made then and maybe it's time to do a few more changes to help us get from here to there.

You know it started, of course, when the families of Woburn came into my office, as it always does for a lawyer, you know, when the client comes in and tells you a story. You go how many are familiar with the story of Anne Anderson and the families in Woburn? Perhaps some of you have read the book? Any had a chance to read the book or seen the movie? How many of you have seen the movie? Well, like I say it was a great, great book and like I say a pretty good movie, but for those of you who haven't seen it and for those of you who have there's just a little re-telling. You see Anne and the families came into my office; it was the mothers, it's always the mothers not the fathers, sorry dads, but it is the mothers for some reason. And they told me this story, and it was Anne Anderson's story and Donna Robin's story

about how they came into this community and life was good. And then the children started getting sick. There wasn't 1, there wasn't 12, there were 24 cases of leukemia they counted the children in the neighborhood, too many cases of children with this disease that they had not really known about before. And they came together, the mothers, and they wanted to get answers to their questions. They challenged the Environmental Protection Agency, a new agency that had just been founded, you know, to help communities determine things. And they said, look, our wells are contaminated with chemicals we never heard of before. You know, we read in the paper that the water we were told was safe was not safe, it had these chemicals that were used in industry in the making of things. And we have these children, too many, with these diseases. Is there a connection between the contamination and the incidence of disease, and who is responsible for polluting these wells? Simple questions and then the agencies, to their credit, you know, went about doing their work and came back and said that the wells were contaminated and there were too many children with this disease but they couldn't say who did it and when, and they couldn't say whether the water was responsible. So, the mothers decided to do something really unusual -- I know you'll find it so -- at the end of that meeting they got together and decided to get a lawyer.

They somehow get me to help them get answers to their questions. So that was their challenge to me, and I explained to them I'm sorry, you know, you don't seem to understand I'm a lawyer. I don't get answers to questions. I file cases and if you have a problem, I can't help you unless I can make a case out of it and if I can make a case, I can help and if I can't, I can't. But you know those mothers they wouldn't take no for an answer. They challenged me. I went to other lawyers with more wisdom and experience and resources and found out why they had that. And they were busy. I came back and told the families but the families again they wouldn't take no for an answer -- they challenged me, they needed the truth. The truth? You're in a lawyer's office, I'm a lawyer. The truth? Let me see now, my relationship to the truth, let me see. Gee, we haven't been on speaking terms for quite some time and, yes, the truth, I know, yeah, that's the thing. Oh, yeah! The truth, that's the thing you take. That's the truth that you know. You go on other people's property and you go and look for buried things, you know, and if you dig it up, people may huge sums for this valuable commodity and, you know, when you do things like that it's dangerous and challenging, and I said let me think about it and I did.

Then I went to my partners and talked about it and we decided to join the families on this journey for reasons that were good and bad and ugly. But we were captured on every level a human being could be captured and we went on this journey and this journey forced us to do things. We had to talk to people who had specialized knowledge who had never been challenged before to answer the question whether these chemicals in water can make people sick. We had to bring those folks together to a place very much like this and at a place very much like this they had to learn to talk a language to each other. All these different folks from different experiences and different disciplines dealing with this question. And you know, before we brought them into that room, no corporation, no institution of higher learning, no government agency. had ever at one time brought all those folks together in one room with all their specialized knowledge to answer that question -- whether these chemicals in water can make children sick, can give them cancer. I remember those meetings and we learned a lot about, well, we learned about making new things. You know, when you make things, you make waste. We learned about the chemical constituents of that waste. We learned about what they did with that waste at the end of the day, and where they put it and where it went and what happened to folks when they got there. We learned that these chemicals, you know, were, well, really tiny quantities in the water from these polluted wells. And we knew that we found out that the body, it's not so tiny that the body doesn't recognize these little particles and tries to get rid of them. And then in trying to get rid of these little tiny chemicals, and it breaks that strand, the DNA where cancer can take root.

I remember thinking about all of this stuff and I have to tell you I became like intoxicated because I realize that I could bring the case that had never been brought before and we did and when we brought that case that had never been brought before we, well, we took all that power that law gives give you and we did things like invaded the land of the thing makers and went and learned about pits, you know, where people bury things. And started digging in people's pits, their pits and they returned the favor by invading our property and digging in our pits looking for what we had buried, you know. And with all that conflict it was war. And war is the only way to describe it. And this war was like every other war. It took far more than it gave back. This war ended like all wars do, you know, in exhaustion.

And at the end of that war -- like I say, the book does a pretty good job about this and the movie -- but at the end of that war I had no things and none of the things I started out with and nothing but pain. It was all pain and defeat. and all I could think about is what I had lost and not what I had gained. And in all of that nothingness I had to start my life, I had to make a choice about ending my life or starting it again. And I made the choice to start it again. But, like I say, doing things differently. You see there came that time, you know, when all that information that we had shared with the governmental agencies. and even though we had had our defeats in the courtroom, there was that sharing of information with the governmental agencies.

And when there was a change in administration the government looked at that information and said, you know, the families are right. The companies are responsible and those companies are now engaged in a \$70 million, 50-year cleanup. And then the agencies also said, you know the families are right. They called the families together one night, one summer's night, and said, you know, you're right, the tests show that this water, that these contaminants in this water that the children who are exposed in utero had a 13 times greater risk of contracting this disease than those who were not. And it was the first time a government agency ever found such a connection, and announced it that night.

And I remember going home that night in the company of the families and there were not so many as when we first started; some of the children had died. But I have to tell you I felt no pain. I felt joy because I had a thought that the court and the judge and my old thinking was wrong. It's not too late for the truth, it's never too late for the truth, and I had another thought about the truth -- that the truth it's not something you have to go and get. The truth -- it's not something you have to take from somebody. The truth, it's all around us and we don't have to go and get it. It actually comes to us when we share experience and when we share experience. soil is created in which life takes root and when a lawyer has the realization about the importance of truth...the families of Woburn taught me that truth is essential to life.

I have to tell you it changes you and I had to, when I made the decision to come back and start being a lawyer again, I found I ended up doing things differently. And now I, you know, I thought I had conflict with the legal system before in trying to present facts and legal principles to assist them that didn't seem eager to listen to them. I have to tell you. when I came back after this experience to present facts and legal principles now with the knowledge of the importance of truth and my relationship to it, my clients' relationship to it and everyone else's relationship to it, that you really get into a conflict with an institution which I have come to appreciate does not, is not, on speaking terms with the truth. And that is a problem. So I found myself doing things like when a client came into the office and I'd hear their story I'd say, you know, it seems wrong to you but I'd like to, you know, I think I know the lawyer for this company, let me call them up. I went and I made an appointment and talked to this lawyer I knew and sat down and told them what shared with him. what we had, and said, look, I'm going to do a little

investigation and I'll share what I find. He said, well, thank you very much, and all that sharing -- we talked some more and then we talked like lawyers. We actually resolved it. This wasn't the, it didn't start out with a, you know, an act of war with the complaint. It started out with a person talking to another person about a question that they had, and could we help each other figure things out for our clients' sake? A different kind of approach.

It was like in Toms River, New Jersey, where the families called me up down there just like Woburn, but things changed. You see when I answered that phone call and came down and heard their story about the children with too much cancer and the wells that were contaminated, we sat in their living room and we made a decision to be partners. Partners, you know -- they look at problem solving as something you do together. An unusual concept for a lawyer to think of, their client as their partner. And then we decided to make a partnership with the state and local governments. And then I went knocking on the doors for the lawyers for the companies responsible. And who should answer the doors but the lawyers for Beatrice Foods, one of the companies in the Woburn case. We had some things to talk about and we did and we went to a place like this and we sat and we kind of shared things and sharing lasted a month and then two months and three months, and actually several months of sharing information. And then after, oh, about a year of that, we made a decision that maybe we'd bring in a third party to kind of help us talk about things. And that lasted another year, at the end of which we made a public announcement that the families in that situation had worked things out, signed a piece of paper to give them the economic tools to dig out of the rubble of their experience. And that took a few years with no litigation, as opposed to Woburn. where it took nine years and millions of dollars of litigation. I began to do the simple math. Nine years, millions of dollars; a few years, a couple hundred thousand dollars. Hmm.

The approach, you know, the approach of one may for a great book. And the other one, that's maybe not so interesting because there's not enough conflict in it to make it kind of interesting. But you know it was interesting for the folks whose problems we were solving. This has been, you know, these lessons have been percolating in my mind and changing the way I practice in trying to help people solve the problems. And its led me to kind of think about this institution and how it approaches problem solving and what is the responsibility of us as, well, first as human beings, second as citizens and then, thirdly, as human being citizens who have decide to become lawyers. How should we go about our business? And I believe it starts right when the client comes in to your office, your relationship to the truth, their relationship to the truth, your relationship to each other, and then going from there. And that we need an institution, we need an institution that actually helps us do those things that helps us be better than we are on our own. And instead of speaking to the worst about us, it actually speaks to the best of us. And I've come to look at this institution and from my standpoint.

We have this problem; they're threatening our existence and we need to solve them. And that's my experience in Woburn and Tom's River – it has shown me that we can't afford the war of Woburn in order to solve these problems. If the problem is too big, too important for us. We can't afford the time or the loss resources, especially the lost time. We don't have a lot of time. We're getting really good, you know; it's not about leveling a forest or even killing a fishery. It's about turning the planet on fire. The scale of it is really big and we don't have the time. So, we have to figure out how can we live on and with this earth together. And we need an institution, the institution that we go to for these very important problems has to be there for all of us not just some of us.

Now, in the wake of *Citizens United*, I'm getting really nervous here because I went through this experience in which I saw what, you know, power and money concentrated, power and money, in fact, these two corporations were two of the largest corporations in the world. Now at that time W.R. Grace

was 6 billion and Beatrice Foods was 8 billion. That shows you how far we've come. Those were considered some of the big boys then. Well, they're a lot bigger now; the scale, our ability to be able to do things now just far outstripping our capacity of thinking. We can't afford these metaphors of the burning rivers anymore. The metaphor has to change in scale because now one well can peril an entire ecosystem like the Gulf of Mexico. How are we going to resolve these things? This institution that we have that was supposed to go to to help us was not there, as chronicled in the book, wasn't there for the big problem of Woburn. But I come to appreciate as a lawyer it's not there for the little problem either, because it makes a fundamental mistake about what it does as soon as the disputants come to that institution. As soon as those disputants come to that, those people in dispute will come to that institution. The institution institutionalizes their dispute and allows them to invest in the dispute, allows them to put their emotion and their energy and their money in the dispute. And it gives them lawyers to help them do that and to prolong it as long as possible. and we cannot afford that kind of an approach to problem solving. It's – we cannot allow an institution that continues detoxification process.

We need, as Chief Justice Burger talked about, an institution that allows us to be healers of the law. Chief Justice Burger, who was appointed by Nixon. I'm beginning to be very nostalgic for the Nixon years I have to tell you. There was [inaudible] and the Environmental Protection Agency. Boy, those were great times. I thought they were the end of times; they were the beginning of the good times, which have now ended. Justice Burger, he also, the chief justice who was considered a very conservative fellow, surprised everybody one day. Came to a meeting of the bar and said, you know, I've been thinking. I think you've got to be crazy to go into litigation. The Chief Justice by the way. I mean you don't often hear Chief Justices say things like that. Yeah, I think we should be healers of the law. What a thought. Healers of the law and he actually is considered to be that moment when he supplied that thought to his colleagues that was considered the moment in the early 1980s that started the so-called alternative dispute resolution revolution that got lawyers to actually think about dispute as something that needs to be resolved; what a thought. We need that kind of thinking but we need an institution that institutionalizes that kind of thinking and I'm going to kind of end on this note and open it up to questions that you may have about this, but I'd like to just provoke you a little bit about this institution.

We fought a revolution against tyranny. We wanted to be in control. We wanted to be the bosses of our own fortune. We had this beautiful wild space and we could start with a blank slate and we didn't want the old ways of doing things. We wanted people coming here infused with the idea that they could make up their life as they wished and they would not be shackled by the past. In order to do that, it meant that we had to think of individuals as empowered citizens, masters of their own fate and our institutions of government should be a reflection of that. And when we got to the legislative it was easy. We got to elect them. And when we got to the President, that was easy. No more king, no more, you know, by birth, no, no, no or by God, no, no, this would be by us in an election. But when we got to the third branch, Article Three Institution, we got kind of tired. We'll just take that one over from England no problem. It'll go right over here. Now, since that I've been kind of studying that decision because I was thinking about it, you know, I was thinking back to that time.

Now say I'm freezing to death at Valley Forge and I just finished having marvelous gourmet food in my shoe and now I've got to get up early in the morning and try and kill some Hessians asleep in their beds on Christmas morning. You know, this is hard dirty work and I sacrificed, one battle to the other, and then, of course, what they do is they pay me in script. Worthless paper for my good deed; you know, to make our country free. Okay, they go through all of that and then they go back to their farms and, well, you know, the war was expensive. So the states like Massachusetts – they needed money, so they imposed taxes on these folks and they said, oh, by the way don't think of paying those taxes in that

worthless script you were paid for fighting for our country, freeing us from this tyranny and giving us the right to tax you. I know you just fought a revolution, you know, no taxation without representation, don't worry about it. You're not represented and we're taxing you but you're not going to pay in that worthless script we gave you. No, no, no. We want gold and silver because the creditors all want gold and silver.

And this didn't make any kind of sense to the soldier. He's thinking, you know, Daniel Shay said, hey, this isn't right. There's that wonderful moment where he got some other folks of the militia there in Springfield and they all kind of lined up in the Supreme Judicial Court of Massachusetts, you know, came there to sit because there were all these deadbeats out there who weren't paying their taxes and there was all this debt. So, of course, they used the courts of the law to enforce order. And then Daniel Shay and his folks showed up, and the Supreme Judicial Court was there. And then they had their militia, they showed up. And then the Chief Justice said all right, look, we'll settle this thing. Everybody on our side who wants to join their side go over here to the left, and everybody on our side who wants to stay on our side go over here on the right. Well, when they made their choice, there was just the justices there, no militia. They had all made their choice and the Supreme Judicial Court left town.

Well, his was completely unacceptable. The disorder and the rebellion was put down, but that experience led to our, you know, we did the Constitution, that Article Three institution where we're going to resolve the disputes, you know, or the rubber hits the road the folks. The Federalists who basically got the upper hand of the argument said, no, we've got to have a central government. But they basically liked having an Article Three institution that website not answerable to the people. because those state governments that were directly controlled by the people were passing laws like, hey, it's okay to pay your taxes in script or it's okay to pay your taxes in goods. You don't have to come up with the gold and silver that very few of you have. And that connection to the people frightened, I think, the folks when they looked at the Article Three institution and we got a mercantile republic. And it unleashed an unbelievable industrial engine, which is the envy of the world for sure. But that Article Three institution, I think that power and money really liked, it was comfortable with an Article Three institution that was not connected to the people, and so there is that lack of connection.

So when you go to the *Citizens United* decision that says, that equates a corporation with a person who votes and says that they're both equal and they both had the same freedom and liberty, the First Amendment, their right to involve themselves in elections -- you have that wonderful, through the majestic equality of the laws, you know, that applies to the rich and powerful and the citizen alike, the right to influence elections. You begin to see that perhaps power and money -- well, while we're sleeping, they are not. This is really kind of a dangerous thing. And so we have an institution that's not connected to the people.

And there's another part about this institution that I think also gets us into trouble, is that it's a contest decider. It's a dispute terminator. It's not a dispute resolver. I think we have to change our thinking in that it wastes time when we're in dispute and when we dispute. Being in dispute we waste more time. That when we're in conflict over conflict, it's more conflict and more conflict costs, and takes time and takes money and we cannot afford it. How about if we look at the institution the way Justice Burger suggested we did should, as a healer of the rift in which we have to help the disputants? Empower the disputants to understand the nature of the problem that they are involved in and help them learn from that experience, to change behavior so that we can have a safer and a healthier and a better future. Not just for the disputants but for us. So that when we had these great conflicts in our nation about who did we elect, we'll not have a decision that comes down to, well, we chose Bush over Gore. We'll have a

process by which the institution helps the body politic figure it out, empowers them to figure it out so that we can civilly resolve our dispute. Really important about who shall be our leader, a different approach. And we keep paying this price that when we look at the fact that when people are in dispute we're just going to legitimize the dispute rather than empowering to resolve it. We miss this opportunity to learn and to make ourselves better than where we were. And when it comes to these problems like the families experienced, this does not work, as the book and the movie I think are Exhibit A. So at that I'm going to leave you just with this thought. Each of us are citizens. All of us are humans and probably a few of us will become lawyers. Don't let your mothers, don't let your sons or daughters grow up to be lawyers, but if you decide to do, if you decide to go down that road as I decided to go down that road -- every morning I get up and decide once again do I go down that road. When you decide to go down that road, I ask that you think about where we were, where we are, and what we're going to do to get to a better place that's safer and healthier and better, and that I suggest we only do together. Thank you very much.

[ Applause ]

**Jan Schlichtmann:** I'll open it up to questions if people want to cross examine me about some of those thoughts. Thank you, thank you. Yes?

**Audience member:** You mentioned the *Citizens United* case.

**Jan Schlichtmann:** Yeah.

**Audience member:** [inaudible].

**Jan Schlichtmann:** Right.

**Audience member:** Where do you see that going in the future beyond the campaign? We talk about who has influence in government, of course, we have regulations to lobbyists, and those are pretty loose to begin with and the money they spend on that [inaudible] making the law.

**Jan Schlichtmann:** Right.

**Audience member:** Do you see Citizens United or any other kinds of decisions creating even more problems for us taking control of those kinds of avenues?

**Jan Schlichtmann:** There's no question. *Citizens United* is not taking us forward. *Citizens United* is taking us backward. I – and there are a few others in the room – am old enough to remember when got the franchise, got the right to vote, seeing on the television the man, at that time it was a man, standing behind the candidate and learning that man had just written the check at that time for \$250,000, a then unheard-of amount and that's why they were standing next to Mondale. His big contributor was standing next to him. And then fast forward. We went through Watergate and the corruption of money and politics and they challenged us as a society. We passed these laws to say, wait, we've got to have limits on these, on these contributions and there's got to be disclosure and, you know, we have to have a government of transparency. We've got to know, if people are going to be bought, we've got to know what price was paid, you know, and we've got to limit the amount of your ability to be able to buy anybody at one time or one place. And these laws passed and we kind of changed behavior and we didn't see those men anymore.

Now, it may be that we didn't see them because they just went underground, which I think there's absolutely a lot of truth to that, but now fast forward to when we look at, well, Gingrich or Santorum. We see that man behind him and they actually now are on television talking about the \$5 million check or the \$10 million check that they wrote. So it now depends upon whether someone will write a \$5 million or \$10 million check and so we're now full circle. So, where's it going to lead? It's going to lead back to the days when, you know, those with concentrated power and wealth are going to be the ones to decide things. Now, it's not as if, you know, again, a lot of that went underground, but at least we had a system in which there was disclosure and accountability and there were limits that made it harder. You know, you had to funnel it through a lot of your friends instead of doing it directly. It just made it a little harder to be able to have such direct control.

So, I am very, very concerned because when we have concentrations of power and money and we equate these concentrations...I mean corporations are, by definition, I mean the strength of the corporation, of course, is what? It takes all of those resources and talents of a whole bunch of people and concentrates them in one legal entity and, you know, unleashes a huge amount, an economic power house, of course, and we had a lot of things to show for that, okay, wonderful, but when we get the thing makers, you know, into policy makers through writing of checks, then things change, you know, conservatively.

It's not like we don't have enough money in politics and it's not like we don't have enough people, lobbyists influencing our lawmakers to legitimize this concentration of power and the ability to write a check as legitimate to a voting citizen. I think it's such a fundamentally dishonest notion in the democracy that I think that it changes the whole nature of democracy. It's no longer a democracy when people who vote have to share their voting power with the people who don't vote but who make lots of money by concentrating power; that's a toxic relationship, a sinister partnership, as it were.

So I'm very, very concerned about it and I think we as citizens have to figure out how we're going to fix that. How are we going to fix it? Is it going to be a constitutional amendment? Do we have to re-think? Do we have to re-explain that "we the people" means "people"? I bet you didn't figure that one out. "We, the people," we're actually referring to "people." We weren't thinking about corporations. We were thinking about people. And now for us after 224 years later to now think about corporations as people in the context of a democracy has now taken the mercantile republic and its desire to not be too connected to the people to another level. And when we hear things like, you know, the 1% and then the 99% -- well, that kind of dynamic one gets a little frightened about what's going to happen when the Anne Andersons of the world wake up and find that the water that they were told by their local employer would say, you know, but not say but don't worry about it stuff can't hurt you or, you know, then where are they going to go? If in fact, the levers of government are now totally in control and responsive to those with money and power.

The book and the movie, I think, made it very clear how challenging it is to get this judicial institution to recognize the rights of people to redress such a wrong, to even honor the truth about the wrong. I fear that there won't even be that. And now we have the definition of, we have the law of, corporate defamation has now been resurrected. The law of corporate defamation. So that a young man in this part of the world who really is concerned about the number of plastic bags and how they're clogging up the ocean, you know, and our world and he decides to have a website that has the truth about plastic bags and the plastic manufacturers sue him. And that law suit goes on for months into years, and this young man then has to go and defend himself, and then eventually has to settle with them.

The First Amendment was the bargain. They got their mercantile republic, they got that concentration of power in that central government, the federalists got that, but the bargain, the constitutional bargain that was made, hey, wait a minute for you to do that there has to be some bill of rights here and the first among the first, the first among this bill is the right of free speech, the right to talk truth to power. We all understood that, having gone through the tyranny leading up to the war how important that right was. And now here we are 224 years later and we're saying, what? Well, that works on the political side, but not against corporations. You know, you can't defame a corporation. Okay, we had the alien sedition acts ten years after we promised Congress to make no law. We broke the promise and we threw the republican editors into prison for writing all those nasty things about government. But the First Amendment is really just about political speech. You can't defame a corporation, you can't say nasty things about a corporation engaging in wrong doing. That goes into the judicial institution and what happens there when the corporation that you can't defame, you can't talk truth to, is the one that's also controlling the government? So I do see a very sinister and toxic partnership.

**Audience member:** So what are you doing and what way do you see to remedy that? I mean are you on a move to amend? Where are you on amending the Constitution?

**Jan Schlichtmann:** Well, I definitely am working with my representatives, who are very concerned. Representative McGovern is very, very -- a congressional representative that we have. And I urge all of you to get involved, you know, with your folks who are of like mind, who think there's a problem here. But the challenge is there's been a lot of talk but nobody has focused on what amendment there should be to rectify this problem. It's not simple. It needs thought, you know, it's delicate. Obviously when you're talking about changing the Constitution, as soon as you open up that door for the change there could be all sorts of changes, good and bad. And so when we start talking about an amendment we need to have it well thought out, we need to put our brains on it to figure out what's important to us and what is not important to us. What are we trying to accomplish? Right now there's a ferment of activity, but nobody has fashioned on it a Constitutional amendment in which there's broad support. People have different opinions about that, and because of that we are suffering from that lack of focus while the problem continues. So, I really urge all of you to get involved as citizens and to find out at your level, who in your neck of the woods is interested on the elected level in trying to figure this out. And I'm hoping that there will be, in a fairly short period of time, this kind of internet convention in which we will begin to put the brains together about what kind of an amendment is necessary in order to make it very clear that we the people is referring to people.

And you would think that that would be an easy one, but in the country in which we've invested, you know, two centuries of economic activity, in which we have used this corporate device to unleash all of this economic activity. It's not easy and we started saying, well, you know, for these purposes a corporation is a person and could be treated like one, but now we have to ask the ultimate question, well, then how about as a voting person? Are they also on that level as well? How do we change the constitution to deal with this afterthought? This, you know, this corporate entity that was developed after we've formed the Constitution. There were no real corporations at that time. The closest thing was a trust, you know, a business trust, not a corporation.

**Audience member:** I had a question about the book.

**Jan Schlichtmann:** Yeah.

**Audience member:** [inaudible]

**Jan Schlichtmann:** Oh, I won't tell you how it ends. It ends happily, because I'm here. [laughter] Although it was really touch and go there.

**Audience member:** Thank you for being here.

**Jan Schlichtmann:** Thank you.

**Audience member:** Thanks for your dedication to this. You mentioned there could be more people at [inaudible]. I was going to ask you to comment on [inaudible] who was the worker who --

**Jan Schlichtmann:** [inaudible].

**Audience member:** [inaudible].

**Jan Schlichtmann:** Yes.

**Audience member:** Sorry. But he really from what my reading [inaudible].

**Jan Schlichtmann:** He did. Yeah.

**Audience member:** People need to [inaudible].

**Jan Schlichtmann:** Well, it's kind of interesting, and I think as a point I was trying to talk about before, about how I went through this process of learning about the system. And I remember that moment. You see, we were taught as a lawyer, you know -- I had to get the truth out of these employees, you know, and so I had these fabulous tools given to lawyers and I got to put the pains over here and the penalties over there. And between the pains and the penalties, you know, of course somebody is going to open up and tell the truth, but the pains and the penalties looking over them and, of course, they always do. The more they close up the louder your voice gets and as it did, you know, what chemicals did you use and what did you do at the end of the day, you know, I wasn't getting anywhere.

We had to take a break. Finally had a little break. I talked to my partner, Kevin. He said, "You know, Jan, you're not getting anywhere with this guy." "Yeah, I know, I know." He said "I've been thinking." He says, "You know, Al, he lives across the street from Anne Anderson. He's got a big family. Why don't you ask Al about how he feels about the water and his children's health.?" "Kevin, that is the most ridiculous--okay, I went back. I said, I asked the question and when I asked the question the lawyers from Beatrice and the lawyers from Grace started to laugh, but Al, he wasn't laughing. He said he got a headache, said he got a headache that didn't go away until he went home and he walked across the street to Anne's house and he sat down with her and shared with her what he knew. Then they came and shared what they had with me and then I took them and we shared with the US Attorney, and W.R. Grace was indicted. First time a Fortune 500 company had ever been indicted for not speaking truthfully to the EPA. A different way of approaching things from what I had learned and how people talked.

It reminded me of the employee of the tannery, you know, who months before in my office wasn't talking but after the case was over and was on appeal and they broke the contract I was in the kitchen of that employee who had not been in my office under the pains and penalties nowhere. But in his kitchen

he was dying of leukemia and he shared with me what he knew and that led to others and others and I uncovered, you know, what I had not known. So, just a different kind of approach, you know, how you get information. Yes?

**Audience member:** I'm told [inaudible].

**Jan Schlichtmann:** [inaudible]?

**Audience member:** [inaudible] Supreme Court or, you know --

**Jan Schlichtmann:** -- this is, I believe two things, and I think both have to go together. I've done some thinking about this thing, I've been challenged by many people as a lawyer. I can tell you what's wrong with it. Okay, you know, my colleagues say, so, what's your big idea? For lawyers it's really hard because since they can't think of an alternative, they don't want to think of an alternative. They just accept what we have. We're feudal, we're in a feudal system and, you know, you do what you do in a feudal system. That's life. Sort of like, you know, there was that time before the revolution where someone said, well, gee, do we really need a king? How can you talk like that? What else would we have? I mean, you know, who would be in charge? Us? These kinds of notions, well, so we have this judiciary. So the first question is they have to be beholden to the people, they have to see the people as their boss. If the Supreme Court, no matter who they were, actually saw the people in the United States as their boss, so they had to answer to them, you would not have *Citizens United*. You would not do that to your boss, you wouldn't do that, that's number one.

But number two, and I think just as importantly, is they cannot see their main mission as contest deciding. And this is where we go wrong. The judicial institution is what? It's empowered by the constitution to deal with what? Cases in controversies. What are those? When we're in dispute. Which, you know, two people in one room, one is going to have more power than the other and at some point they're going to abuse that power and they have to go to some place and deal with that abuse of power. Well, they've got to go to this institution. The institution that they go to right now, I suggest to you, is itself an abusive power. Why? Because what? It is a system in which when they come, when the person comes through the door they're wearing different clothing. When they come into the room, they have to go be highness, they have to have a highness to them so that they can speak down to us. And when they come through the door we have to stand up. Do we do it due what Montesquieu talked about devotion to liberty -- that we're all in this together or all this notion of equality, or do we stand up out of fear of contempt? Which is why we stand up? Not because we respect them but because we'll be punished if we don't show respect, not feel respect. In a republic, Montesquieu said we feel respect. In a despotic government, we show respect. It's a big difference.

So, when the person comes in the room, then what's their job? To decide the contest. Now, if their boss is themselves or their institution, a secretive, ritualistic, hierarchical institution, okay, whose job it is to decide a contest in which I'm to be in fear of this person, then my natural inclination as a lawyer in such a situation representing my client who wants to get favors, to curry favor with that person is to argue facts and law? Yeah, of course, that's for show, but what do I really want to do? To inveigle favor. And who are the successful lawyers? The ones who know to inveigle favor from the system better than others. That is a corrupting process. So it's not just that they are answerable to the people, but we have to stop contest deciding, we have to have them look at their role -- not as a content decider who is higher than us and imposes their will on us, one win, one loses. They have to see their role is what? A resolver

Now, just think about it. If we're in dispute right now and the person comes through that door, if they come through that door in a robe and they're referred to as Your Honor and they're going to decide the contest and they don't need us...they're the ones with all the power to decide they're going to treat us in a certain way and it will be a way I'm very familiar with. Dismissive. Not really respectful. We show respect. They don't have to show respect back, but if that person comes through the room without a robe and he sits down at a table at the same level that we are and he can't impose his or her will, he has to do what? Help us figure it out. The approach to that person immediately is what? Respectful, empowering, and he's showing by the very body language and how he is treating, he or she is treating us, is that they were doing it in a way that says, hey, we got to figure this out together. It's an empowering notion; a totally different way of looking at dispute resolution

And this whole thing about lawyers has changed their lives. They are bred in one system and then they end up going through a mediation system, or a system in which people are going to a room and they treat each other with respect in which problems get resolve in lightning speed. More information is transferred over a table between people sitting down, whether they like to be in that room or not. But they're there because of the problem has brought them there. More information gets transferred in those few minutes than in years of litigation in this institutionalized intoxicification. That has to change. They have to be dispute resolvers, they have to see their primary role as that which will attract a different kind of person to that, than one that gets their jollies off of having special clothes and being higher than other people -- secretive, ritualistic and hierarchical. We'll get a different person attracted to the job. And they will have to do their job differently. And, at the end, they'll have to answer to us. I suggest in that kind of situation we would not only not have a *Citizens United* we would not have Bush beat Gore. We would have figured it out. We wouldn't even have Nixon, *US against Nixon*. We wouldn't have *Plessy vs. Ferguson* and *Dred Scott*. All those wonderful times where the court was not there for us. We won't have those things if we look at dispute resolution as something as an empowering thing that helps us be better. to mend the rift to be the healer. As opposed to just settling a contest, which you know, has a lot of years behind it, but I think it's time to evolve. Yes?

**Moderator:** So we'll take one last question and then a brief thank you.

**Jan Schlichtmann:** Sure. Yeah?

**Audience member:** Do you think, theoretically, we can overturn Citizens United?

**Jan Schlichtmann:** Yes. As soon as we, as citizens, get united. [laughter] That's the trick, and we have to be united over a thought, an empowering thought. And the empowering thought we have to be united over is about how this is a republic of citizens, a democratic republic of citizens. And it is not a mercantile republic of just the powerful, concentrations of power and money; it's not that. It really is not. We have to reject that notion and we have to get all of our fellow citizens to be united in that concept or we're going to have more citizens dis-united. Yeah? You were over there?

**Audience member:** Tell us something about the judge in this case, his motivations?

**Jan Schlichtmann:** The motivation of the judge?

**Audience member:** Yeah.

**Jan Schlichtmann:** You know, I guess my whole reason for my thoughts that I've been sharing with you today is that people would say, well, your problem was you had a bad judge. And you know what? I didn't. He's actually a really smart human being, very charming and smart and thought of as in the [inaudible] class when he was first appointed, but it doesn't matter to me. It's not about getting a good judge or a bad judge, because they're put into an institution of bad thinking and the job that they have makes them do bad things when it comes to dispute resolution. They become abusive. It doesn't matter democratic appointee, republican, it doesn't, you know -- liberal, conservative.

There's this great book, "Supreme Power." Just came out; written actually by a former speech writer for Clinton. Was a comparative lit professor, but he wrote a great book about the struggle between Franklin Roosevelt and the Supreme Court. I urge you to see that because you can see it all laid out. It's a page turner, really, about all the struggles during that period where the country is trying to figure out, what are we? How are we going to resolve this economic chaos? And it didn't matter really. Some great liberals were on that bench like (Louis) Brandeis and (Benjamin) Cardozo, right? And then he had Charles Evan Hughes, the so-called moderate. And then you had some real old timers, you know, old time conservatives, but the thinking was an institutional thinking and it didn't matter who appointed them. It was an institutional thinking that made it very hard to be responsive to the problems that the people were having and then you see how that played out over years and how, you know, we nearly lost it during that period and it's a lot of wisdom for today's struggles.

**Moderator:** Thank you so much.

**Jan Schlichtmann:** Thank you so much. [Applause]