

**CENTERS FOR DISEASE CONTROL AND PREVENTION AND THE AMERICAN
SOCIETY OF LAW, MEDICINE & ETHICS**

THE PUBLIC'S HEALTH AND THE LAW IN THE 21ST CENTURY

NEW PERSPECTIVES ON LITIGATION AND THE PUBLIC'S HEALTH

JUNE 19, 2002

ATLANTA, GA

MR. GENE MATTHEWS: Good morning and welcome back. How are you this morning?

I wanted to start with a little bit of a vote here. The number of elected officials in the audience -- and this will not be recorded in the register or the record, but I just want to hear a little bit of information.

We're obviously looking to the future. Our conference, as successful as this, people sit around at the break and they ask a question, of course, you know, "Are you gonna do it again?" is kind of a question that people have been asking us.

So, really, I have two questions for you this morning. The first one would be, how many of you think that we should repeat this conference again in the future? That's pretty good. I don't -- there are a few people that are not quite so sure, but that's because they're really thinking about this.

The second question would be, if we -- if this -- this is a build it and they will come question. If we were to have this again next year, would you either come yourself or encourage someone else to come? Okay. Well, that's pretty good.

We will submit this information to the Program Planning Committee, and you will hear more about this later on today. So thank you very much for helping us with this decision making process.

I've been asked to do two things this morning. First of all, to orient you to what we're going to be doing today, and then introduce the panelists who are joining us now on the stage.

The program, as you know, yesterday was extraordinary. The dinner speaker was incredibly stimulating and inspiring, I think, to all of us who were there. I was really grateful to have been in the audience and hear Attorney General Gregoire describe the Master Settlement Agreement.

The panelists yesterday, the plenary sessions, were absolutely marvelous. And today, our first panel will continue to build on that theme, and talk about the issue of litigation as one way to shape broad public health policy.

We will then move to plenary sessions; from the plenary sessions into concurrent sessions; and then, we'll have lunch today as we did yesterday.

Our afternoon plenary panel will be especially forward-looking. As we all know, we are in the midst of an unprecedented effort to strengthen our nation's public health infrastructure. If we recall the events of the fall and the things that have followed subsequently, our nation has focused attention on public health, now as never before in our country's history.

We've moved from the back page to the front page. The term public health infrastructure has been front page news, on the New York Times, the Washington Post, the Wall Street Journal. People are now concerned about the state of our nation's public health system.

And this conference, which focuses on the state of public health legal preparedness is an essential ingredient, in our view, of strengthening our nation's public health infrastructure, ensuring preparedness if something were to happen again in the future.

And we'll be focusing this afternoon on that. Our afternoon panel will challenge us to think about public health preparedness, and public health legal preparedness particularly.

We're thrilled to have our former U.S. Senator, Senator Sam Nunn, who will be on that panel, and will be joining others to address these challenges and point the way for the future.

At the end of the day, Jim Curran, a good friend and Dean of the Public Health School here at Emory University, will present a summary of our conference and will point the directions to the future.

So, we invite you to be active participants today.

Let me now, turn to introduce the members of our panel. What I'll do is introduce the Chair, and she will then introduce the other participants.

Sandy Praeger, who is chairing our session this morning, has served in the Kansas Senate and the House of Representatives for a number of years. She was elected Vice President of the Senate in 2001. Senator Praeger now chairs the Financial Institutions and Insurance Committee, and is a member of the Senate Public Health and Welfare Committee, and a number of other committees of that body.

She has won passage of a large number of patient protection laws, external review of health plans, and insurance and expansion of children's health insurance in her state.

She is a national leader and has served as past chair of the Steering Committee of the Reforming States Group and, in 1999, was recognized by the American Medical Association with a Dr. Nathan B. Davis Award for individuals who have made a significant contribution to the public's health through elected and career government service.

So, please join me in welcoming Senator Sandy Praeger.

MS. SANDY PRAEGER: Thank you. It is a real honor to be here this morning and to moderate this panel of incredibly distinguished persons in the field of public health and public health law.

I'd like to introduce our three panelists right now, so that I don't take up valuable time from their presentations. And the panelists will speak, each of them, for about 15 minutes and then we'll open it up so that you can ask them questions.

We're going to start this morning with Jan Schlichtmann, and I'm sure he's a name that you all know from his book, *A Civil Action*, and that was eventually made into a movie. He's of Counsel to the firm of Levin, Papantonio. He's had extensive experience as one of the country's most notable plaintiffs' attorneys, specializing in the area of environmental and toxic tort litigation.

Mr. Schlichtmann received international recognition for his representation in the 1980s of eight Woburn, Massachusetts families against W. R. Grace and Beatrice Foods for contamination of the Woburn City Water Supply. This is the groundbreaking case that's been the subject of many press reports and articles in legal and scientific journals, as well as his national bestseller and movie, *A Civil Action*.

He's lectured at many of the nation's leading law schools and colleges, and spoken before numerous national and regional professional organizations. So, I know we're all looking forward to hearing his perspective on the whole legal community as it relates to protecting our environment and public health.

Next, we will hear from Michael Ciresi. He's a name partner and Chairman of the Executive Board of Robins-Kaplan Law Firm. The firm, with its principal office in Minneapolis, is internationally recognized for its expertise in litigation.

Mr. Ciresi's trial practice and consulting is focused on product liability, intellectual property, business and commercial litigation. Mr. Ciresi has acted as counsel for corporations, individuals, and governmental entities.

Some of his more visible cases include the State of Minnesota and Blue Cross-Blue Shield of Minnesota v. Philip Morris, Inc., the Dalkon Shield litigation, Copper-7 litigation, and the Government of India v. Union Carbide, in which Mr. Ciresi was the chief counsel to the government of India.

Mr. Ciresi has taught and lectured nationally and internationally to professional and business groups. He's one of the few lawyers who's been recognized on two occasions in the National Law Journal's annual list of the ten of the nation's top trial lawyers and, in both 1997 and 2000, he was named by the Journal as one of the 100 most influential lawyers in America.

In 2000, he was a candidate for the United States Senate in Minnesota and, in 2001, Mr. Ciresi was named Best Product Liability Attorney in America by Corporate Board Member Magazine.

He earned his Bachelor's Degree from the University of St. Thomas, St. Paul, Minnesota, and his Juris Doctor from the University of Minnesota. In 2001, he earned an honorary Doctorate of Law Degree from the Southwestern University School of Law.

And our third panelist this morning is Diana Bontá. She's the Director of -- it's Diana, I'm sorry, Diana Bontá. She's the Director of the California Department of Health Services. She's had 30 years of experience in the healthcare field, including her earlier position as Director of the Department of Health and Human Services in the city of Long Beach.

In addition, Dr. Bontá has held the position of Deputy Executive Director of the Los Angeles Regional Family Planning Counsel, Regional Administrator of Rural Health Programs for the State of California, and various other positions with hospitals, as Clinical Instructor, and Head Nurse of Medical and Pediatric Units in Los Angeles, Buffalo, and New York City.

Dr. Bontá was awarded the Milton and Ruth Roemer Prize for creative local public health work by the American Public Health Association, and received the California Women's Law Center Annual Pursuit of Justice Award.

She earned her Doctorate and Master's Degree in Public Health at the University of California, Los Angeles, and her B.S. in Nursing at the State University of New York in Buffalo. Very bi-coastal.

It's really -- I think we have a real treat in store for us. These are people very well known in their professions, and have a lot to contribute to the discussion on public health and the law.

So, we're going to begin with Jan Schlichtmann, move to Michael Ciresi, and let Diana finish up, and then we'll open it up to your questions.

MR. JAN SCHLICHTMANN: Well, thank you. It's a real pleasure to be here this morning, and you know, what a great conference. First of all I like the name "Public Health - The Law in the 21st Century, a Partnership Conference." I like that word "Partnership." It took me a long time to understand what it really means and to try and apply its meaning in my personal and professional life. And it's a great conference, and it's not only that, but you think well, you know, of the participants here.

Last night, we had a wonderful presentation by Attorney General Gregoire and her story of self-discovery, her journey, that has benefited so many folks. And then you said, you know, "Hey, you're gonna get up -- you can get up early this morning. You can exercise the body, you know, in this beautiful and vibrant city."

Well, I have to tell you, and I travel a lot, and so this morning I was determined, you know, I was gonna do it, you know. And I got up at 6:00, you know, and I was determined. I looked out the window and I saw there was light but no sun, and I said, eh!

I figure I'll do the normal exercise that I do. You know, the one I do on the road. I went and turned on

the television, and then I went down and opened up the door and bent down and picked up the newspaper and figured, you know, I'd -- well, I'd find out, you know, what happened to the world while I was asleep. Whoa, whoa, whoa! And what I saw and what I heard and what I read, you know, it just -- it made me want to crawl right back into bed, and I did. And I figured, you know, another hour or so and maybe things will get better.

But, no, I had taken in all of this indigestible mass of information and so I was tossing and turning, you know that -- you know that feeling, and then the dreaded thoughts. The dreaded thoughts that you get, especially when you're on the road, you know. "Why am I here? What am I doing?"

And then, I'm trying to orient myself. Well, let's see. It's a conference on public health and the law in the 21st Century, a partnership conference, it's gonna begin and people want to hear, you know, some of your thoughts and, you know, and I just -- I figured I'd just stop thinking, and I did. And as I stopped to think, I had a thought, as you often get, you know.

And I went back to the newspaper and I kinda looked at it again, and turned the television on and thought about it again. You know, there seems to be these two -- these two visions of life, you know? There are this -- well, there are the stories about problems that are caused by folks who think that there is profit in giving up your soul for the world. And then there's a whole other set of stories about the terrorism in the world, caused by folks who think it -- who think it profits the soul to give up the world, you know?

And we've got these two diseased visions of life, you know, this kind of soulless, unearthly visions, and it makes kind of a -- all the rest of us, all the rest of us feel like we're on the front lines of the war, you know. And it's like a time in the war, you know, where -- that time in the world when you're -- you really can't remember how it all began, and it's near impossible to think about how it's all gonna end, and your greatest task is just trying to figure out how you're gonna survive today.

And I think -- I think that's why we're here. I think we're here because we've figured it out that we can't do it alone. We can't do it on our own, and if we're gonna survive this war, if there's gonna be a victory to this war, we're gonna have to come together at a time and a place like this, and we're gonna have to figure it out together.

And I'm honored and privileged that you've invited me to come here to -- well, to chat with you, and see if together we can't begin to figure things out. You know, to figure out how maybe we can get from where we are now to a safer and a healthier and a better place. To maybe survive this century and maybe even thrive in this century.

But I know you didn't invite me here to ruminate about such things. You want to know -- it's like, have John Travolta play you, sure. That's why I was invited. I know why Michael was invited, but I know why I was invited, you know.

And I get this question asked a lot. You know, I think my mother had the best answer. She was asked

by a woman who is little and old and Jewish. She said, "Travolta." My mother said, "Well, a handsome Italian boy playing a nice Jewish boy. What's not to like?" I mean, Joe Pesci and Danny DeVito, you know? Thank God for little miracles.

Now, I know this was a very hard part for Travolta to play, you know, to play me. So, you know, he did some research and everything. He became very, very upset and he jumped on one of his jets -- he has six of them you know. And he went out to Burbank and he went up to the Dwarf's Building. You know the Dwarf's building? Remember the dwarfs? You know, they look kinda cute, you know, when they're on the comic strip or on the cinema but, when you blow them up 70 feet, they're kinda menacing.

Anyway, he went up to the seventh floor there and he laid it all out. He said, "Look, I can't play this lawyer-guy, you know. He's too greedy, too materialistic." They said, "How about \$20 million dollars?" He said, "Okay, I'll try." All I know is that he made a hell of a lot more money playing me, than I ever made playing me, you know? I mean, the little ironies of life, you know, I've come to appreciate.

But one of the privileges of -- and honors really, of having lived through this experience -- there are many blessings to it -- is that I get to be invited by folks like yourself to come and kinda talk about things, you know? And some folks are, you know, they've heard the story, read the book, seen the movie, or heard the story, and they come and they say, "You know, some folks are concerned." They say, you know, you know, concerned about the risk that the environment, you know, poses to us. And others are concerned about the risk, you know, we pose to the environment.

And all of them are saying, "You know, hey, you're this lawyer and you've had this experience, you know, and maybe you could dig around in that experience and you could -- well, you could tell us the law, propose the law that, you know, kinda solve this problem or change in administration policy or lawsuit, sure! That's what you do! You've done it. What's the lawsuit that could solve this problem?"

And I have to tell you, if I was asked that question at a younger stage in my career and in my life's journey, I think I would have rattled off the law or the policy change or the lawsuit, you know, that would save us. And -- but I've gone through an experience and I have to tell you, at the end of this experience, it made for a good book and a movie but, you know, at the end of this kind of Cuisinart of an experience, I began to think that maybe it's not just about laws and policy changes or lawsuits. These are tools for sure, and important tools in the toolbox. But, like every good carpenter, you know, you don't blame your tools for bad work, and it really in the end is gonna -- it amounts to something else; something else we have to think about to guide our use of these tools.

And, you know, I think that the, you know, when folks come to me as a lawyer -- and they used to come, you know, and in the earlier years -- you know, and I was very excited about being a lawyer. I loved being a lawyer. I still love being a lawyer, although I'm a little older and wiser about what it means to be a lawyer. But in my younger years when I was a little more energetic and, you know, a little more aggressive about things, you know, I really liked when folks came to me. You know, they

were abused by exercise of power and I thought it was easy.

You see, they came to me and, well, they were being threatened to be destroyed by power, and so I said, "No, no problem." You see, my world as a lawyer is that I'll gather up all the power that the law gives me, and I'll try and destroy those who are trying to destroy my client. Whoa, whoa, whoa!

I went through an experience, you know, at the end of which I found out that, well, I found 'em in the law of human physics. You know, power destroy power, it's a physical impossibility. Oh, no, no problem, no problem. You see, they come to me and they, well, you know, they've been punished by power. Well, I'll gather all the power that the law gives you, and the law gives you a lot of power you see, and I'll try and punish those who are punishing my client.

You know, I went through an experience, at the end of which I found out that punished power always seeks its revenge. Whoa, whoa, whoa! Hey, ain't no problem. You see, they've come to me and they've been abused by power, and no problem, I'll take all the power that the law gives me and I'll abuse power. Whoa!

And I thought to myself, "Wait a minute. Me, abuse power?" And, I became confused, you see. Became confused and lost and, well, a little afraid by it all, you see, and I -- well, I couldn't figure it out. If you couldn't destroy or punish or abuse, well then what role is there for me as a lawyer, you see? And, I figured there was no role and so I went away.

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 mid-life crisis. And if you are thinking of having one, I urge you to go there. It's a beautiful place, therapeutic place -- and, in that place I tried to have a new life, you know? No law and no past and, of course, it didn't happen. But some other things had happened.

You see, when I took on the Woburn case, when the families came to me and they told me about their problem, you know, how they had woken up to find their children sick and dying, you know. And they found that their, well, that the water that they had told was safe, was not safe. It was contaminated with chemicals they'd never heard of before, you know, common industrial chemicals used by industry in the making of things. You know, they were filled with questions and they wanted answers. See, and they came to my office because they had these questions and they couldn't get these questions answered elsewhere.

You see, they had gone to the EPA and they said, "You know, our wells are contaminated. We have a simple question: Who did it, and when?" And they went and they did something else, you see. They went around to their neighbors and they knocked on the door, and they asked, "Do you have a child? Does your child have cancer?" And if the answer was yes, it went down on the list, you see. And there weren't six, there weren't 12, there weren't 18; 24 cases of children with this disease, too many in this small community over a too short a period of time. And they went to the CDC and they said, "You know, we've counted the numbers of children with this disease, there are too many, you know, we want to know is the water responsible?"

Well, the EPA and the CDC, you know, they spent time and resources. They went up to the community of Woburn. It was one of the first times that they had done so, and they spent a lot of time and energy. And finally, they brought the families together and they told them. The EPA said, "Hey, the wells are contaminated, but we can't tell you who and we can't tell you when." And the CDC said, "Hey, we've counted the numbers of children. There are too many, but we can't tell you if the water is responsible."

Now, this just wasn't satisfying for the families, you see, and so they did as I say, they came together and they made a decision. You know, I know you'll find it to be a bizarre one. They said, "We'll get a lawyer." Sure. Well, get me. I mean, by somehow by getting a lawyer, by getting me, they're gonna get answers to their questions.

You know, I remember sitting in my office and telling them, "Oh, no, no, no, you don't seem to understand. You see, I'm a lawyer. People come in with a problem, you see, and I look at the problem, and if I can make a case out of it, well, I can help, and if I can't, I can't. You know, in order for me to make a case out of this, why, there has to be a wrongdoer. Who did it?" "Oh, the authorities don't know."

The authorities don't know, and I'm thinking, you know, how much time and energy am I gonna find to spend to find out who did this and, after I do that, you know, they're gonna have the "what" to make it all worthwhile, you know?

And I said, "Hey, the law requires something else. You know, between a wrongdoer and a wrong, there has to be a connection, the thing called causation. Did any of your doctors tell you that your children's cancer was caused by the contamination of the water?" "Oh, no, no, the doctors don't know." And I'm thinking, the doctors don't know? And I'm thinking, is there a scientist or a doctor in this country, in this world, they'll be able to get and -- and after I sobered them up, what kind of a witness would they make, you know?

No, no, no. I knew I didn't have the wisdom, I didn't have the experience, I didn't have the resources to do such a thing, you know, and I told them so but they wouldn't take no for an answer. And well, you know, I did some research, you know, like a lawyer does. I started looking at all the -- at all the signs, you know.

And as I looked at the signs and did my research, I saw that all the signs, they pointed to two, well, to two corporations. Two of the largest corporations in the world: W. R. Grace and Beatrice Foods. Between the two of them, they made everything, you know.

And I began to think about things, you know. And I heard the rumors. You know the rumors, you know, that there are little things buried on their property, you know, valuable things, yes. And if you were quick enough, if you were clever enough, why, you just might get on their property, you might be able to unbury them and people will pay huge sums to possess this information.

And well, I just have to tell you, I sat there thinking. You know, I thought about the children, I thought about the need, I thought about the challenge, and the treasure. You see, I thought about it all, and I said, "This is what I want to do." And, I went to my partners and they said, "Hey, all for one and one for all," and we were on, and we joined the families on this journey.

And what a journey this was. You see, this was a journey into science and into medicine, a journey into law and the legal system to be sure. And what I was to find out, like all good journeys, you know, this was one you had to go on a personal level, and I was to find out a spiritual one as well.

You see, in order to bring a case that nobody had ever brought before, we had to go and talk to folks who had different experience and different knowledge, and we went to them. And one led us to another and to another, and it became all very confusing. And so we decided to do something we'd never done before.

We brought 'em all together at one time and one place, a place like this, you see? And, there was -- and in that place -- and it was the first time that anyone had ever done it, no corporation, no government institution, no corporation, no institution of higher learning -- had ever brought together all those folks from different experiences to ask a simple question, "Can these contaminants in a water supply make children sick, give 'em leukemia?"

You know, and there was a hydrogeologist, and the geologist, an immunologist, a toxicologist, a cardiologist, a neurologist, a psychologist, and a psychiatrist -- mostly for me and my two partners. Well, there's all of us just in a room talking together and they had to come up with a common language to answer this question. And they did, you see, and they came up with these connections and it became very exciting to hear it, you see.

Well, we learned about the making of things. You know, when you make things, you make waste. We learned about the chemical constituents of this waste. We learned what they did with the waste at the end of the day and where it went, and what happened to folks when it got there.

Very exciting stuff but -- well, so exciting I became intoxicated on it. You see, because I realized we could bring the case that nobody had ever brought before. And we did bring the case that no one had ever brought before.

And the law gave us power, and we took that power and we got to go on their property, and we did. And on their property I discovered things. I'd never seen 'em before, pits, pits. I learned a lot about pits. You know, pits, they're -- well, they're dug by people, you know, in order to bury things.

You know what I learned about pits? They're dirty and dark and dangerous. And something else about pits. You know, when you jump into somebody else's pit, you know, and you start digging, sometimes you end up digging your own. Whoa, whoa!

And something else about pits and burying things. You know, no matter how deep you dig, you know, and try and bury something -- buried things, they have a very strange way of resurfacing.

You see, I found out something else. When you jump into someone else's pit and you start digging, usually they return the favor and start jumping in your pits and digging and, with all that invasion, this conflict; with all that conflict, there's war; and war is the only way to express what it was. And it made for a good book, or a great book, and a good movie -- not quite as good as the book.

You know, but this was a war and we all know about war. And this war was like every other war. This war went on too long. Yeah, and this war, you know, like every other war, it took everything. It didn't give quite back as much as it took. And in this war, like all wars, it ended the way all wars do, the only way a war can end, in exhaustion. And it was in the exhaustion of this experience, as I say, that I went away to another place hoping to forget the past and to start a new one. It didn't happen.

But, you know, something interesting did happen. You see, the EPA had looked at all the information that we had shared with them and it said, "You know, the families are right. These two companies are responsible." And they did something unusual. They invited the companies to a place like this and they shared with them the information that we had shared with them. And after all that sharing, something interesting happened. The two companies, they wrote a check for \$70 million for a clean up -- it'll take 50 years.

And you know, something else interesting happened. You see, I heard about all of this. And I decided to -- well, it wasn't happening there. I decided to make that long hike home, you know, from the lava rock of that place back to the bedrock of New England. And when I got back to my place in my beginnings, I began to think about the past and to think not about just what I had lost, but what I had gained.

And something interesting happened. You see, in the summer of 1996, the CDC, which had now evolved into the ATSDR, or part of it had, and when it brought the families back together again in a place like this and it said, "You know, the families are right. The families are right. You see, we've looked at the data." All the data that we had shared with them and that others had shared with them, and they said, "You know, the families are right. The water was responsible. The data shows that children were exposed to these chemicals in water, had a 14 times greater risk of contracting the disease of leukemia than those who were not."

And it was the first time that this agency had ever found such a connection. You know, I remember that night. I remember going home in the company of the families that night, and there were not so many as when we first started. And I remember feeling no pain, it was only joy.

You see, yes, it had been 17 years since the wells had closed and 15 years since Ann Anderson's son Jimmy had died. But, you know, I realized that night that it was not too late for the truth. That the truth was not something you had to go invade and dig up and take from someone. But the truth was, well, it was all around us. And it comes to us when we share experience. And when we share experience, soil

is created in which life can take root.

And since that experience, I've had time to think about and to apply those thoughts to other things. You see, since then, I've gotten a lot of phone calls. Especially since the book came out, and they're always on a Sunday, yes. "Hey, I just read this book about how you gave up everything for your clients, including your sanity. You sound like just the lawyer for me." Aah! No, no, no. You know, I'm married, I have two boys, I'm a little tired.

But there was a phone call from a mother in Toms River, New Jersey. She said, "You know, we've read this book, and I have to tell you, Mr. Schlichtmann, we've got these wells and they're contaminated with solvents like in Woburn. And we've got a lot of children with cancer and two companies -- two large companies." It's always two large companies. "And we have a lot of questions and few answers, and I was wondering if you could come down and help us answer some of those questions. Maybe you'll learn something." Well, I couldn't say no to her, and so I did.

You see, we came down to a place not so unlike this and we chatted for awhile about what we had learned. And at the end of all that chatting, something interesting happened. They formed a group. Called themselves TEACH: Toxic Environments Affect Children's Health.

Sixty-nine families, all with children with cancer, and we formed a partnership. You know, that's a good word. You see, a partnership between lawyer and client. You know, partners, they look out for each others interests. You know, they understand that everybody has limited resources, and they look at problem solving as something that you do together.

And, as together, we went to the local government and formed a partnership, went to the state government and formed a partnership, went to the federal government and formed a partnership, went to the CDC, the ATSDR and formed a partnership. And you know what we said? "You know, this is working."

I thought, well, we'll take it one more step and we'll go and knock on the doors of the company, and we did. And who should answer the door but the lawyer who used to represent Beatrice Foods. Aah! Well, it's not like we didn't have something to talk about. So, we did.

We sat down and we talked, you see, and after all that sharing, we came up with an interesting idea. We formed a partnership, a limited partnership, which said, for a limited period of time there would be no lawsuits, all rights would be preserved, and we would share information -- to the extent lawyers can, and it's hard -- to see if maybe we can figure out the past and what, if anything, should be done about it.

And we did it, and I am proud to tell you that, just last December, after three years of this process, we made a public announcement; a resolution for those 69 families. A resolution that will give them the tools to dig out of the rubble of that experience.

And you know, I've since been able to go on from there to other places, Ft. Lauderdale and Florida,

and other places, and I began to understand that these problems, these human-made problems, have human-made solutions. And we can solve these problems only if we do it together. And together we will learn to live on and with this earth, and have a life which is safer, and healthier, and better.

Thank you very, very much.

MR. MICHAEL CIRESI: Well, thank you, Jan. I've heard the story before from you, but every time I hear it, it's more interesting and I pick up more.

Now, you complain about John Travolta. For me, they would've picked Danny DeVito! It's hard to realize it, but when I started trying lawsuits, I was six feet and I had hair. At least you still have your hair.

The issue of public health and the law is, I think, one of the most profound issues we'll face this century. Former Surgeon General Koop, at the conclusion of the Minnesota case against the cigarette industry, said it was one of the most significant public health developments of the second half of the 20th century. I was proud of that, not because we were involved, but because the law had a profound impact on the public health.

You know, we hear of the specter of this great threat to the American way of life today. And it's not the obscene salaries earned by CEOs, and I use the term "earned" advisedly; it's not the failure of professionals such as those at Andersen, or for that matter lawyers who were involved in that; it's not Enron and what they did. The specter is not even terrorism.

The specter that you hear pouring forth from some respected newspapers, from which I will not mention the name, but one is based in New York and has the initials WSJ, is the lawyers, the trial lawyers, this great scourge that's going to bring down our free democracy. What nonsense.

I could talk about the Dalkon Shield, where there was a failure of regulatory agencies in this country. I could talk of Bhopal, where there was a failure of corporations and international regulatory agencies and governments, but I'll choose cigarettes.

Because the issue I think that faces the law and public health officials, which all of you -- or most of you are, is is litigation a valid tool in some cases to advance the public health? I submit to you the question is unequivocally, yes.

Let's take cigarettes. Over 400,000 Americans killed yearly. I submit to you, intentionally, knowingly and willfully, by people who sit on boards of charitable organizations, who go to church or to their synagogues or their mosques every weekend, who are pillars of the community and yet, every Monday, go to work knowing that they are and have been killing hundreds of thousands of people.

The federal government knew that; they did nothing. State governments knew it; they did nothing. Legislators knew it; they did nothing. The public health community knew it, and they neither had the

resources nor the ability to stop the industry.

So, should law come into play at that point? I suggest it should, and it did. Should you make new laws to retrospectively go back and gather up and hold those people accountable? I suggest you should not. Florida did. I have problems with that, from a due process standpoint and from other standpoints judicially.

But should you press the law to its fullest extent to hold companies like that accountable? I say, yes. And the reason I say yes is because there are reasons that governments were unable or unwilling to act with regard to the cigarette industry.

First of all, the tentacles of that industry reached into every hamlet, every village, every town, every city, every legislator, and into Congress itself in this country. My goodness, if you go into the Capitol and you look up, you'll see the tobacco leaves. They spread money willingly and ably. They manufacture money off the carnage of their product.

So, their effective lobbying prevented any effective act by government. And when government did act, it was co-opted by the resources of the tobacco industry.

Secondly, government could not act, in my judgment, at the state or local level because it lacked the resources, both temporal and financial, to take on that industry.

Thirdly, prioritization, or many other issues that government, both local, state, and national needed to address.

And finally, I think government in many respects looked at the risk and the benefit of proceeding against the tobacco industry, and they said, "We can't take them on." So, private litigants stepped in.

Now, should that happen in all cases? And, I just want to pause at these questions, or these two positions, so that we can talk about it in the question and answer period. The WSJ -- and again, I don't want to name them -- says that we're gonna be overrun by these lawsuits.

Is there a potential for abuse? And I heard it many times. "Who ya going after next? The chocolate industry?" Or this industry, or that? You know, everybody raises these specters. Yeah, some people may; some are today. Will they prevail? I doubt it. But the law has checks and balances in it to handle those types of abuses. I think the greater abuse is in not acting.

But let's assume there is an overuse of courts and a regulation through litigation. Is that good? I think it can pose problems. It can have an adverse effect on the judicial system. It can lead to unnecessary reforms of the judicial system.

We see today an increasing and unprecedented attack on the judicial system. I submit to you that those who are attacking, some have valid bases which should be discussed. But the overall attack is

unnecessary, unwarranted, and it's for political gain. That is the way our system of democracy works.

People have a right, institutions have a right, to petition government to try to get it to act in their interest. But we must understand that for what it is. Because I think there's two great pillars in our society: the ballot box and the jury box. And I know of nothing more democratic than a jury listening to well presented cases, arguing among themselves as to what is the correct course of justice in this particular case.

So, when people say it's "undemocratic" to have regulation by litigation, I think they show an abysmal lack of knowledge about our system of jurist prudence and about our Constitution.

But, we are seeing unnecessary reforms of the legal system as the result of some abuses, and there have been those abuses. We need only look at the asbestos issues, some of those. And I'm not talking about when the asbestos cases started, and the courageous acts of the lawyers who brought those initial cases and moved that litigation forward. But some of what we've seen in the class action area, I think any reasonable lawyer, plaintiff or defendant, would have to say there's been abuses.

Another risk of premature or overuse of litigation is the attack on the jury system itself. There are those in this country who would like to decide by themselves, behind closed doors, what the law should or should not be. They don't like juries. They say judges are better. Well, I've been practicing law for 31 years, and I think if you'd talk to most judges, they would tell the juries invariably do the right thing.

And I don't know about any of you folks, but if I had something at stake, and that had to be decided by one person or by a jury of 6, 8, 10 or 12, I'll take the 6, 8, 10 or 12. They'll bring their collective wisdom, judgment, biases and prejudices, and they'll debate, and discuss, and argue. I don't argue very well with myself. I don't know how you folks do. But one person, I don't think, argues very well with herself or himself. So we have to be aware that when we bring these cases we can have an adverse impact on our judicial system.

In our case, in cigarette case -- and I've saw it all. You know, Jan talked -- I could talk for -- as Jan could -- hours about the cigarette case. I can tell you about Attorneys General, Attorney Generals, excuse me, who wouldn't bring this case for love or money. But did they run to the money when they thought there was gonna be some? Willing to give the industry immunity for a big pot of gold; unwilling to pay the price of prosecuting the case.

I'm proud that one state, one state, looked at 33 million documents and tried the case against the industry, and that was Minnesota. I'm proud that one Attorney General publicly stood up and said no when they wanted a national settlement in 1997, and that was Skip Humphrey.

When I called him at Tyson's Corners and I said, "These folks are selling out." And Skip, when we got into this he gave me one promise. This case would be decided not on political grounds, but on legal grounds. And he said to them, "No. Minnesota will not go along." And we didn't.

And we were joined by the public health community. And I think, because of that public health community, that bill was defeated in Congress. And we went on and tried our case. And what resulted was that the documents came out.

And here's one thing that can be done by litigation, and I'll keep this short. I think the proudest moment that we collectively as a firm had was when, in October of 1998, after our settlement in May, we were invited to speak to the World Health Organization in Geneva. And I stood in front of a room like this of public health people from across the world and talked about the Minnesota case. And at the end, everybody with their translators, you know, questions came in.

They weren't so much questions as expressions of gratitude. And what these folks said from around the world is, "Would you go back, Mr. Ciresi, and thank the people of Minnesota for seeing that case through and getting these documents out, because we're using these documents in our country. We can't get at this. We're using the depositories that have been established in our countries because we could never do that under our legal system."

I think that's what the partnership that Jan talked about, that partnership between public health officials and lawyers, can accomplish. And in this ever increasingly smaller world, where we are so interdependent on each other, we have to understand that this is not a local issue, some of these issues, these public health issues. It's not just a national issue, it's an international issue.

And I think that there is a proper role for the law and lawyers to partnership with public health officials in advancing the cause of science and advancing the cause of justice.

And I applaud all of you who are here today for doing that in your individual states.

Thank you very much.

MS. DIANA BONTÁ: Good morning everyone. I'm just very grateful that both Jan and Michael are on the same side as I'm on.

I want to talk for a few minutes about California. Our population is now over 33 million in the state. The California Department of Health Services has 6,000 employees now in the department, and we're responsible not only for the public health program, but also for the Medicaid program, which in California we call Medi-Cal.

The budget for my department is \$30 billion dollars, with a "B." And right now, what we're looking at in the state of California, is a 24 billion budget gap. In fact, what they're discussing in Sacramento is the cuts which all of the departments are needing to sustain. The cut for the Department of Health Services at this time is \$1.1 billion.

I want to tell you that, within the department, we have quite a number of attorneys who assist us. Barbara Yanamora (sp) is our Chief of Legal Counsel. She's here with me today. She has 70 attorneys

under her in the health department that handle administrative hearings and provide the substantive area expertise as they work with the Deputy Attorney Generals on cases that ultimately go to the Superior Court or beyond.

And since I've been with the California Department of Health Services, which is about three years now, we've had 2,750 requests for administrative hearings. The cases are heard by nine administrative law judges, who are attorneys, and ten hearing officers. Can you guess how many law cases we currently have in the department? Eight hundred twenty-nine law cases currently in the department. Half of them, about 412, are in the Medi-Cal area. The second highest area is in licensing and certification. About 100 of the legal cases are in administrative areas and personnel. And thankfully, less than 50 of the cases are in the area of public health.

Medi-Cal dominates certainly our budget and our litigation in the health department. I'd like to tell you that when I first started with the department -- it was in June three years ago -- I hadn't even actually taken my oath of office when I was contacted by the governor's office. Could I do an interview the next day? I thought that was part of the job, and so I said Sure.

I asked them what was the particular media? They said television. Fine. What was it going to be? They said 60 Minutes. I thought, well, maybe it's the nice guy from 60 Minutes I'll get. Who was the interviewer? Mike Wallace. What was the topic? Medi-Cal fraud. I thought at that time that I'd probably be the Director of record who lasted one day.

We had the interview; in fact, it lasted 45 minutes. It's exactly what you would anticipate, very stressful. The interview that aired was just a few seconds long. Essentially my message was this: "I don't like fraud, the Governor doesn't like fraud, I'll work damn hard to get rid of fraud."

I promised Mike Wallace that he could come back to the state of California a year from then and that he would see that we had made significant difference in the allegations that were before us. And the allegations were that we were losing \$1 billion worth of Medi-Cal money a year in California to fraud.

Well, as you could imagine, I had to very, very quickly figure out a strategy, and that's where the lawyers came in very, very useful. They helped in development of the strategy; creation and implementation of software programs to edit for patterns of fraud; a legal framework for issuance of moratoriums on the provider enrollments of durable medical equipment; creation of a definition of pharmacies to prohibit using the title as a provider unless medications are actually dispensed from the location; creation of (inaudible) language and legislative bills -- at least three of them -- that would create monitoring sanctions, jail fines for offenders, create the authority for higher penalties when children are used in a crime in order to have fraudulent claims. Children were being used, victimized, with unnecessary filling of pinhole cavities by dentists. They were paying teenagers for blood samples to falsify lab specimens.

Three years later, I think that we are the national model of how to ensure the integrity of the Medi-Cal funds so that they can be used for people in need.

Attorneys in the department are also challenged by legislation. This year we are analyzing 420 legislative bills. On our watch list are about 716 bills going through the California legislature. Our legislature is in session every year, with only breaks between the months of October to December -- if you call it a break -- because that's usually the time that they have testimony through task force and through other committee hearings.

An area of -- that, in every legislative session has numerous bills, is that pertaining to nursing home reform and labor issues. And statutory changes and reimbursement formulas and components of our Aging With Dignity Initiative have taken a significant amount of legal consultation.

When Governor Gray Davis wanted to increase the monetary fines for state citations, it was the legal staff who sat down with our licensing and certification staff, and our legislative staff, to craft the language of the bill, to meet with the stakeholders, including the nursing home industry, labor, consumer interest groups, and the respective attorneys.

On an ongoing basis, we oversee the licensure of nursing homes, hospitals, community clinics, and numerous public health areas such as tissue banks and radiological entities.

As we make regulatory changes to these numerous licensees, we go through a regulation process that's probably very similar to what you experience in your own respective states. As in many of your jurisdictions, our rule making process incorporates a public comment period requiring an opportunity for interested persons to weigh in on the proposed regulation. And these comments, whether they're presented orally or they're presented in a written fashion at a hearing, result in changes then to the regulations.

Now, our process takes anywhere from 18 months -- from one year to 18 months -- to get through the hearing. You might say, "What are some of the subjects?" One that is in the final stages of issuance is our nurse to patient ratios for hospitals. We're the first in the country to establish these ratios.

As we debate the initial one nurse to six medical-surgical patients, and within 18 months post adoption of the regulation, the ratio will be one nurse to five medical-surgical patients. We certainly have been in the spotlight, certainly with a lot of media attention. I expect as we implement the regulations, that we're gonna receive requests from Labor for reports of compliance, and that we'll have the first challenges of citing non-compliant facilities.

Well, how do we avoid litigation? I think that there is a definite role of our advisory committees. We have 57 statutorily created advisory boards in the Department of Health Services. And though they take a lot of time from our staff members, from myself, to fully engage with them, I think that they have had some good remedies for us, and certainly an opportunity for us to discuss in a very public setting the ideas and concepts that later go on to become regulations.

An example of these in California, are our Lyme Disease Advisory Committee, the Advisory Committee

on Human Cloning, and the California Electric and Magnetic Fields Program Stakeholders Advisory Consultant, which is a program that's actually created by order of the California Public Utilities Commission. The Electric and Magnetic Fields Program's primary function is to oversee research into the possible health effects of EMFs, to provide education and technical assistance to the public regarding EMFs, and to use the research results to produce reports and information on EMF-related issues.

Now, this Advisory Group helped choose the topics of research, reviewed the requests for proposals, advised on the peer reviewers to select the contractors, and helped to select an External Science Advisory Panel to judge our department's EMF risk evaluation guidelines, and risk evaluation itself.

Two policy analyses were carried out. One dealt with schools, and the other dealt with the power grid. Our results include a large epidemiological study of miscarriage and EMF, a survey of EMF in a random sample of 89 California schools, a review of occupational EMF exposures, the two policy projects, and a 300-page EMF Risk Evaluation, proved unanimously by the External Science Panel -- Advisory Panel.

Jan (?) would say, "This doesn't make a difference unless you put it into good use." And I welcome you to come onto our Web page site through www.ca.gov and to look at some of these tools.

Now, we can't predict if we're ultimately gonna have litigation in this area, but I think that this provides us for an opportunity to have a very public discussion. To be able to have our scientists -- scientists in the external academic setting, join us together and look at the best policies, together with the public that we serve. Because this is an equation, as Jan said, to really look at the partnership that we need to have in our communities.

I will tell you that there was a case of litigation after I came to the department that I was somewhat embarrassed about, because it was a lot of my colleagues that I have worked with over the years. It's the case of La Raza versus me. It deals with Healthy Children's Organizing Project, the National Counsel of La Raza, the Southern Christian Leadership Conference of Greater Los Angeles, and quite a number of other groups. It's an example of an advocate community, which the department had been working with, but it helped to push the department in the direction that we really needed to go.

The California Statute provides that, before July 1, 1993, the department should have adopted regulations establishing a standard of care, so that each child is evaluated for risk of lead poisoning by health-care providers during the child's periodic health assessment. I think this is very familiar to many of you here in the audience.

And California Statute also provides that, after April 1, 1993, the department must ensure appropriate case management for every child identified with lead poisoning. Well, you can imagine, in 1999 when I joined the department, six years after, we had not established this.

Within six months, this group of colleagues said to me, "You know what? We've waited too long.

We're gonna file." The Healthy Children's Organizing Project and others filed a petition for a writ of mandate, ordering the department to promulgate the regulations within 60 days of issuance of the writ to ensure appropriate and effective case management for children identified with lead poisoning, and to collect and analyze all information necessary to monitor appropriate case management efforts. And the court issued the writ of mandate, granting that portion of the petition, and DHS subsequently adopted the regulation and the screening.

We did that in record time. And I think that's because this gave us, certainly, the push to make the actions. It gave me the ability, certainly, to go to our agency and to the governor's office and say, "You know, when our friends are pushing us like this, we really need to pay attention. We really need to make the changes." And I know that many of you who have been working in this area know the significant work that has transpired in this particular area.

Other programs and initiatives that have been started, continued, or expanded as a result of cooperative efforts between the department and advocates, include such examples as breast and cervical cancer prevention and treatment, cancer research, the indoor smoking ban, the five-a-day nutrition promotion, the birth defects registry, and infant Botulism treatment. Not all of these required litigation to get consensus. Sometimes they did; for the most part they didn't.

I think that, in a state that has tremendous natural resources, we will see litigation to protect our environment. And in some of these cases the public's health will be perceived as not being protected. We have a case right now that deals with decommissioned radioactive materials at a level as low as reasonably achievable, or what is called ALARA, and allowing that to be placed in facilities licensed for waste. And this certainly has been controversial.

The public's health will not be perceived as being protected when children choke on candy that is neither regulated by the Consumer's Protection Agency or by the FDA Product Recall. And it will not be perceived as protected when we don't have an immediate recommendation on anthrax, smallpox vaccination, or KI distribution.

Yet, all of these areas require thoughtful analysis and ultimate action. It may not make all parties confident that we have made the best decision, but I think ultimately our roles as regulators will entail our using common sense as never before, and that is our best commodity; that and a sense of humor.

I'm grateful for the opportunity to be here this morning. I look forward to our discussions. And I want to especially thank all of the organizers from CDC, in particular Gene and Tony, for the work that they've created in making this vision come today.

Thank you.

MS. PRAEGER: There are microphones in the aisles and, at this time, we'd like to open this up to questions for these distinguished panelists.

Yes?

MR. RICK GOODMAN: Hi, I'll begin the questions. I'm Rick Goodman from CDC. I'm a Medical Epidemiologist. And my question is to both Mr. Ciresi and Mr. Schlichtmann, if you might each attempt to answer this. Just given where your thinking may have been when you were law students and where your careers have taken you, and the topic of this panel discussion this morning, should law schools be teaching public health and epidemiology? Would it have made a difference to you? Is this a topic worthy of development in law schools? I'd be interested in hearing both of your thoughts on this.

MS. PRAEGER: Mr. Ciresi?

MR. CIRESI: Well, my first journey into epidemiology was a disaster, frankly. And, yes, I think that, particularly for those lawyers who want to go into this area, and there are courses now in law schools and public health, etc., but epidemiology itself is something that probably should be taught, but probably by going, you know, across departmental lines.

When you're in law school -- many law schools today have joined programs. You can go to the School of Public Health or you can go to the Medical School, Business School, and take some courses. And I would highly recommend that because, in this area of the law, the epidemiology becomes critical and essential.

Now, we know that under the law, to prove cause and effect, you don't need statistical significance. One of the problems that we're faced, from a lawyer's standpoint, is that there's been a big push by what I would call more conservative elements under certain case law, that you need to show an epidemiological cause and effect to prevail.

Well, that's not the burden in the courtroom. The burden is more likely true than not. And there's other factors, or indicia, of cause and effect. You know, biological plausibility, you know, temporal association, etc., etc. We go through those. And I think it's absolutely essential for a lawyer presenting this type of case to understand. And not in a 10,000 feet level, but down on the ground level to understand epidemiology. Absolutely essential.

Jan?

MR. SCHLICHTMANN: Yeah, I think that law schools would, you know, that when I was in law school -- and many law schools now, although there's a change afoot -- you know, we use the case book method, which was basically you -- the thought here was that, if you study appellate court decisions -- these -- kinda these artificial creations -- that somehow that's going to teach you how to use -- develop legal skills and be able to solve human problems. Of course, relying on the wisdom of appellate judges to help you figure out how to solve a human made problem is a -- good in theory. It has not, after 25 years in practice as a lawyer, has not really been of much benefit.

I think it would be more appropriate if we actually had the human problems presented to the law

students, and begin to talk about how lawyers, in partnership with others, can begin to solve these human made problems. And I think we would learn a lot more as lawyers and as human beings, and be better lawyers because we'd be better human beings, in being more sensitive to how human beings cause problems and, therefore, how human beings can solve problems.

MR. CIRESI: Can I say one thing, Senator? This will be the only war story.

On epidemiology, Rick, I was once faced with a pre-eminent epidemiologist who'll go unnamed. He was from Harvard. And he was talking about hospital bias. So, I'm, you know, I hadn't really studied epidemiology at this point.

I said, "Well, doctor, certainly you've heard of the discovery validity factor, which countervails hospital bias." He looked at me and he said, "What?" I said, "Discovery of validity." He said, "Well, I'm not sure that I'm aware of that term. What is that Mr. Ciresi?" I said, "Well, that's where, you know, you're in the hospital, and it may be hospital bias, but they do the diagnostic testing, etc., and they discover there is validity to this." "Oh, yes, I've heard of that."

Well, there was no such thing as "discovery of validity." And I think that that points out that, you know, epidemiologists as lawyers -- as everybody who has a degree gets caught up in their own terminology and in their own sometimes myopic viewpoint of how the world operates.

So yes, we should study epidemiology, but we should put epidemiology in its right place in how we develop these cases.

MS. PRAEGER: Over here.

MS. DONNA BROWN: Yes, I have a question for Mr. Ciresi. Donna Brown (sp) from NAHO (sp).

You alluded very briefly in your talk to -- or suggested that the public health community bore some responsibility for defeat of the bill in Congress. Could you elaborate a little on what you meant by that and, more importantly, what lessons you think the public health community should draw from that experience.

MR. CIRESI: Well, in 1997, March or April of '97, there was a push to get the cases settled on a national level. The proposed bill was one that would pay a lot of money to the states. But, in addition, it granted the industry immunity from punitive damages, it did not provide for the disclosure of the documents, and I can go on and on and on; all the provisions that we found unacceptable.

And this push for this bill was widespread. Almost every state supported the bill. Minnesota opposed the bill. There were a couple other states who came along, but their Attorneys General were not vocal on it because of -- frankly, it was collegiality. They wanted to work in the background. And I don't feel I can disclose who those were, but those who followed the case closely may know who they were.

But they were few in number. Skip Humphrey is the only one who publicly said, "We will not go along with that bill." And we had tremendous pressure on us.

At that point, we went to the public health community and, frankly, many of them came to us. And they worked with us and they lobbied Congress and said, this Bill is not good for a whole host of reasons, and they laid it out. And I thought that that was critical. That support was absolutely critical in that bill being defeated.

And then other things happened in Congress. You know, other senators and congressman started putting on other bells and whistles on the bill. I think some of them, finally, were people who supported the tobacco industry and they just wanted to make it totally unacceptable.

But I think the real critical impetus to get that bill defeated was the public health community. I see Doug Blanke standing up, and he was with the Attorney General's office at that time, and he can probably give you a perspective from the AG's office. But that certainly was my opinion.

And I think that that speaks to what public health officials must do on issues of public health. They have to be engaged. And you sometimes do that at great risk, and I understand that. But I think it's absolutely essential. And the folks that I've dealt with, at least in Minnesota and other states during the course of cigarette litigation, always -- at least in my judgment -- had that courage to stand up and be counted, so --.

MR. DOUG BLANKE: Good morning. I'm Doug Blanke from the Tobacco Law Project, and I have another question for Mike Ciresi.

Mike, would you comment on the status of the Department of Justice's lawsuit against the tobacco industry? And do you have any observations as to what you think its prospects might be under this Administration.

MR. CIRESI: Well -- Senator, maybe you should be on the other side of this one since I understand you are a Republican, and you were much more successful at your attempt at public office than I was. But, I think that the law -- and I have to be a little circumspect because we advised the previous Administration on that lawsuit and the Justice Department.

Clearly the lawsuit would have had more support, and you need support in these lawsuits, under the previous Administration. I have not been asked to consult with the Bush Administration on the lawsuit, so I can't tell you what the odds are for a successful resolution of that, Doug. I have my doubts to be honest with you. There was an attempt at the outset not to fund the lawsuit. I know they did get funding. I just think you have to have the backing of the Administration to go forward on a suit like this.

There's an attempt now to get the case resolved, if we are to believe the press. So I don't hold out a lot of hopes for that lawsuit bringing any dramatic impact to the whole tobacco issue.

But, you know, it's easy for me to sit and criticize the Bush Administration when you can take a look at every state legislature. They have had a profound opportunity to affect public health for generations to come. And where is the money going from these lawsuits? Roads, this, that, everything but public health.

And now, with the shortfalls, what's happening to this money? It's being raided to make up for the shortfalls. That's what's happening. So, you know, you can't just blame the Bush Administration, it's Democrats and Republicans alike.

MS. PRAEGER: Right here.

DR. JIM DALE: Good morning, I'm Jim Dale, Director of Environmental Health in Jefferson County, Colorado, and my question is for Dr. Bontá.

I found it interesting that you had created this work -- this work group on RF, electromagnetic radiation. And I kinda wanted to understand the process you went through in deciding to do this in the face of resource constraints and, from my perception, lack of biological plausibility on this exposure causing disease process. So, I would appreciate you talking about that from the environment you face out there.

DR. BONTÁ: Yes. Well, I think, you know, a major consideration was the Public Utilities Commission. There had been lawsuits in California from individuals who were saying that the value of their property was lessened by proximity to power grids, to power lines. And so, looking at that, the court said it was really looking at the PUC and the health experts who could perhaps put more of an emphasis on the research and look at this issue.

It was a difficult one. Apparently had been one that, as I said, garnered a lot of media attention. The PUC said, we will contract with you, Department of Health Services, and leave it to your expertise. Because I think that's very important to make sure that there wasn't the tie-in with us feeling that we were obligated in any fashion to the PUC to come up with a recommendation that would say that there wasn't a nexus to the electromagnetic fields at a causation or a possibility of causation of health effects.

This is a very difficult area of research, as you well know, and very difficult to establish exactly what is transpiring. I would argue that, perhaps looking even at our preliminary results, that there'll be many who will say this still is not enough. That you can look at the probabilities, you can say that there is some association with miscarriages, but you can't have, as both Jan and Michael have said, a direct link in there.

So I would expect that there will still be litigation, there will still be discussions on this. But the reason that we did this is because it in fact was an issue that the public was concerned about, and concerned about their health.

UNIDENTIFIED MAN: -- Here at CDC. I just wanted to ask Senator Praeger, who is a nationally

known champion of public health -- she'd be too far modest to accept that in public, but it's true -- if you would just reflect from a legislator's point view on the role and the interplay of legislation on one hand, and litigation on the other in setting public health policy.

MS. PRAEGER: Thanks Tony, and that I think is a stretch, but --.

I've been in the Legislature for 12 years, and I've seen us go at it in both directions. Let me just by way of answering the question, just give you an example of an issue in Kansas I was sharing with Jan earlier.

Several years ago we had, well, we've had concerns for a long time about the water quality in our Kansas River, a lot of it from surface runoff from farming industry. And that's one of the top industries in Kansas, so it's not easy to bring farming issues to the legislative process. We have 125 House members, many of them from rural parts of the state, many of them representing the Ag Industry, and so it's -- it is not easy.

But the issue was the water quality in the Kansas River. And one of the ways we thought we could begin to develop -- and it would take time -- but begin to develop some public opinion around water quality, is to promote greater recreational access to the river. Because, when we tell people, "Here's this river. It's a great natural resource. Canoe the river but, oh, by the way, don't eat too many fish from the river because they're contaminated. And if you eat a regular diet of fish from the river you'll run into some health problems. And if you're going to stop at one of the sand bars on the river, be sure you take your alcohol wipes because, if you've had your hands in and you've actually touched the water, you'd want to wash your hands with alcohol wipes before you have lunch." And, you know, a little bit of that would go a long way towards generating some public opinion about cleaning up the water.

One of the problems in canoeing the river in Kansas is that we have sand dredging operations. We evidently have really pure sand at the bottom of the river that they love to use in a microchip industry, so -- the silicon. So, the -- but sand dredging operations have these cables that stretch all across the river. And sometimes they're under water and then will just pop up out of the water without warning.

That's not a very good environment for canoeing. One wouldn't want to have that cable pop up in front of them. And I don't know if you've ever canoed, but, it's not easy to stop a canoe. It's not easy to get 'em going either if you don't have much flow, but once you're moving, they're not easy to stop.

So, we wanted to at least have a moratorium on new sand dredging permits so that we could determine where the best access points for canoeing could be, and begin to promote this recreational activity. Well, so I -- we had legislation. We tried to get the legislation passed. We fell short.

The Corps of Engineers has control over the river, so they ultimately could decide yea or nay on the sand dredging permits. Oh, and just coincidentally, the politic side of it. I live on a cul-de-sac of ten homes. One of the dredging operators lives on my cul-de-sac and is a -- I think is still a friend.

But, the legislation fell short, but the session was over. I called the Corps of Engineers in Kansas City

because I knew we didn't need the legislation. We could just go to the Corps and say, "You know, you have a responsibility to be the guardian of the waterways, and you're really not doing a very good job right now on our Kansas River because of this.

If you take too much sand out of the river, the river wants to replace it. It goes to the path of least resistance, which is the silt and the dirt on the side of the river, gradually the banks degrade and you've got, instead of a river channel, you've just got a wide marshy area.

Well, the Colonel wouldn't meet with me, but he did agree that on Monday morning at 10 o'clock he'd be in his office and I could phone him. Well, I thought, he's gonna be in his office at 10 o'clock on Monday morning, as a courtesy to the Colonel, I think it's just so much better to meet in person, so I showed up at his office a few minutes before 10:00. And there was just a scurry of activity as they brought in the engineers and everyone else. I had -- also the President of the Friends of the Caw, that's the Indian name for the Kansas River, with me.

So we met, we talked about it, we impressed upon them, made the point that they really should have been making themselves about these permits. And all we were asking for was a moratorium until we could determine where best recreational access could be, so we wouldn't have a permit for a dredge right at a point where we wanted to encourage families to access the river for canoeing.

Three weeks later I received a phone call late in the afternoon from the Colonel's office and he said, "We just wanted to let you know that we denied the permits." And it took me a minute to realize what he was saying. They hadn't just delayed, they had decided it really was in the best interest of the Kansas River and the people of Kansas to, not only deny those permits, but I think they pretty much decided that there will be no further permits granted on the Kansas River. There are enough there right now, and so were able to go forward.

Back to Tony's question. We used the Bully Pulpit of the legislative process to get our message out and -- but ultimately, we forced those who were in a position of making the right decision, to make the right decision. So there are all sorts of ways to get a message across. In Kansas, it would have been very difficult at this particular time to generate the kind of legislative support, because of the strong, strong farm lobby.

We've had -- we had another issue, and if time permits at the end, I'll share it with you, where we've -- we really have diminished the water quality standards in Kansas. We did that last year. And our Secretary of Health and Environment fought it to the end. I was so proud of him, and he's received some awards for his work. But we were not -- we were not successful and we feel fairly confident that the EPA will step in and challenge that.

But I think -- you have to assess your legislative and environment. And if that isn't the way to go, I think there are other ways, as has been demonstrated by our panelists. But that was one example for how just getting the message out encouraged those who could make the right decision, to make the right decision.

Please.

MR. DAN STEER: My name is Dan Steer (sp). I'm the Chief Counselor for the Wisconsin Department of Health -- excuse me -- and Family Services. Mr. Ciresi promoted, I think, the position of the classic role of litigation in promoting the public interest in public health.

Mr. Schlichtmann, on the other hand I think, is proposing that lawyers partner up with other folks, including the opposition, as a result of his classic litigation experience in the Woburn case.

I'd be interested in hearing from both of you, Mr. Ciresi, whether you see a partnership role for lawyers due to the litigation, and vice-versa from Mr. Schlichtmann.

MR. CIRESI: Well, I don't think that what we said were mutually exclusive. Defendants usually say at the outset, you know, they want to partner up. Of course, their idea of a partnership is they have 95 percent and you give 5 percent.

I'll never forget one defense lawyer who always said, he said, "My partners call me a Pilgrim, I'm such an early settler." Of course, he represents a pretty powerful company and he was able to get settlements that were favorable to his client.

I think this. That we as a law firm, we've always found solutions. You know, and let me say this at the outset. Litigation is probably the last place you want to be, because what you're really doing at that point is taking the decision making process out of the decision maker's hands, and you're putting it into a third party's hands, be it a jury or a judge. And there's some uncertainty in that process.

What I think is important in the public health area is that, if you are going to bring litigation, then you have to have clearly defined objectives, just as you do in bringing any lawsuit in the business sense. I tell business clients, "Look, what's your business objective for bringing a lawsuit? Why do you want to do this?" And I think it's the same in the public health context. What are we trying to achieve?

And if you have those clearly defined objectives, it may be to get the information that the company has. Well, then you really can't partner up if the company says, "Well, we'll stop doing it over here, but we're not going to give you any of the information." It goes back to the inner-relationship that I talked about in my remarks.

What's happening in Wisconsin is most likely happening in Minnesota, and North and South Dakota, or California. So it's important, if you're gonna bring these suits, if you make that decision to bring a lawsuit, that you have those objectives and then you get the information that helps you achieve those objectives so you can disseminate that information.

One of the things people like to do is keep things secret. How do you serve the public health if you keep things secret? So, I think you can find those resolutions.

What Jan was talking about, I think, was once you arrive at that certain point where people see it's in their best interest mutually to resolve something, that you then go about and set up a process that you're able to resolve these cases on behalf of individuals. I agree with that entirely.

MR. SCHLICHTMANN: Well, we ended up at the -- I mean, I agree with everything that Michael said there. That, you know, the litigation is a means, not an end. And too many times people see the litigation as the end point, you know. And that's like, you know, war as the end point. There's just -- the resolution of the problem is the end point in the end, although litigation had to be resorted to, which is just another form of communication, there was a resolution. I mean, there was a sit down, there was the event in which there was the sit down, and a resolution, a signed agreement saying here is this problem and we have resolved it.

And that really is the -- you have to keep that in mind as lawyers. What's the ultimate goal here? You know, what are we trying to do? We're trying to change human behavior. And how do you change human behavior? Well, one is you can try and force another human being through the power of the law to change their behavior.

But in the end, what I have found as a lawyer, and I think all lawyers who spend more than 15 minutes practicing law come to this conclusion, is that you get to a resolution when people want to get there, and not by being forced to get there.

And I think as you, you know, as you go through the journey of the law, you begin to appreciate that the sooner you can get folks to see their common self-interest in resolving the problem, the sooner you're gonna have a resolution. And it really is the challenge of the lawyer to help the client and help the so-called adversary and their lawyer begin to see the common self-interest in the solution to the problem. And the sooner you can do that, the sooner the problem gets solved. And the longer it takes, the longer it takes to solve the problem.

MS. PRAEGER: Please.

MR. MATTHEWS: Gene Matthews, CDC Legal Advisor. Question for Diana and perhaps Sandy as well. It has to do with the role of agency attorneys. There are probably 80 to 100 agency lawyers setting in the room.

Dan Fox has an article out on the table that describes historically the roll of public health attorneys and, in certainly the last 50 years of the 20th century, our role was that of technicians, of technical advisors. But as a good colleague of mine at CDC years ago passed me an article about the importance of the house counsels being agnostic on the policy decisions that are made by management. We provide the advice; they make the decisions.

Clearly what is occurring here is something different. If law is the tool of public health, and lawyers have to provide the advice and guide us in the operations and programs and implementation, then we're

stepping out of our historic role as the technicians.

Diana, you manage 70 attorneys. You have to have had some sense of this. And Sandy, you've seen this in the state situation. How do you see the future of how we manage this, evolving lawyers like me, sort of out-of-our-cave of providing legal opinions and legal advice to providing the sort of operational leadership in these type of areas?

MS. BONTÁ: It's a great question. You know, when I was with the city of Long Beach, much smaller certainly in the scope than the state of California, but it allowed me as a local Health Department Director -- there would frequently be issues that needed to be addressed. Perhaps that an industry was doing something that caused the local school children to get headaches because they had fumes that were coming from a work site that was adjacent to a school.

And I remember going to my city attorney at the time and saying to John Calhoun (sp), "John, let's use the public health nuisance law," which gave me a very broad ability to say, "This is a public health nuisance, so stop. You're causing harm in this community. And until you stop causing harm, you cannot continue." And John was a very courageous individual who said, "Yeah," at all times. And so we had the ability to really use this in a very good fashion, I felt, in terms of protecting the public's health.

Now, at the state level, though we have a tremendous number of staff members, I think it's much more difficult to use that broadness of the law and to interpret, because we're just faced with so much litigation.

But you know, certainly, Gene, in terms of the role of the attorneys in the department, it is more in a partnership where we're -- I actively seek their advice. They're at every executive staff meeting. Why? Because we're talking about strategy. We're talking about how do we, in fact, have a dialogue with people who may be across from us in litigation in the future, but that we want to try and resolve these issues before they become such a problem that it becomes so overwhelming.

And they're part of strategy for me in terms of doing the right kinds of things. Whether it's in terms of the fraud that I mentioned, or it's in terms of creating good, sound, legislative analysis in working with members of the legislature, or it's in fact in working through our advisory components to ensure that what we are devising in the department will stand the test of time in terms of us putting forth good public health policy.

So, I've learned in those experiences that, if you take the time to realize that attorneys shouldn't be just in their offices doing their legal brief, and then just presenting them to you, but in fact, the dialogue must be between the health professionals and the attorneys, back and forth, in which we challenge each other, that we get the best, I think, as a product out of it.

MS. PRAEGER: I think in most states, the experiences, the legal staff in departments of health -- and in Kansas, it's a combined health and environment -- spend a great deal of their time providing technical assistance to the legislature as we struggle through pieces of legislation. But, in Kansas, we're a part-

time legislature where -- 90 day sessions. So the rest of their time is spent working in the public environment, enforcing water quality standards in feedlots for example, and that's a big issue. But it's more of a mediation role.

I think, to step out of that and to become much more public in terms of promoting litigation, you'd sure want to make sure you had the chief of staff, your governor, solidly in your camp before you -- I think there'd be major job threat without that.

So I think you'd want to have a strong administration that felt that this truly was in the best public interest. And that's where, again, that legal staff can help bring a long that governor. That may not have been the governor's top five issues when that governor was elected, but you can help make it one.

So I think there's a real strong role in the public health environment to help educate, not just staff and the public that you're working with, but also legislature and the administration so that if you want to move forward, you've got the backing that would be critical, I think, to do that.

And I would love to see more of that. We often times in the administration and within the agencies, I think, are perhaps too cautious and wait for external pressures to push and to get agencies to respond. And I think, certainly there's a role of leadership for public health to assume. And I think it's a very appropriate role, and I think could be done very easily. I can't imagine a governor, regardless of political persuasion, that wouldn't get behind a good, strong, public health agenda.

MS. BONTÁ: I just wanted to add that Barbara Yanamora (sp), as our Chief of Counsel, she's been very actively involved in the Black Lawyer's Association. And that has been a tremendous benefit for us as a department, just in having colleagues that she turns to, but also just participating in the Bar.

And we encourage certainly in the department that the attorneys are part of our society and out there participating in their professional associations, and certainly in their work that they do in their own private lives. Because it makes a big difference to be able to know, as colleagues, people like Michael and Jan, and to be able to have that discussions with them in all participation, certainly, at the Bar -- legal Bar.

MR. MATTHEWS: Quick question on experts. In each of your situations, you rely upon scientific experts. It's obviously integral to the litigation process, to the process of policy development, and the process of legislation.

What do you look for when you're listening to an expert? And, particularly, what do you see as the responsibility of scientific experts in areas that are highly polarized?

MR. SCHLICHTMANN: When you were talking, I was thinking about back to my war experience. I remember there came a moment where we had to, in the midst of the discovery, which was like a war, we were redoing the -- re-pumping the wells. The government was going to turn on wells, GNH (sp) to see what the historic reach of those wells was.

And so I remember we had this meeting. And at this meeting were the companies and their engineers and they're lawyers, and the plaintiffs and yours truly and our experts, and the government and their experts and their lawyers.

And I remember when the government came up and said, "So, what's the proposal, you know, how do you propose to do something?" I remember the lawyer for the company got up and said, "Well, our expert would tell you that, you know, we have to do this and that and dig it over here."

And then I, of course, got up and said, "Well, you know, our expert would tell you that we had to go do this, and then we" -- well, we disagreed and then we got violent in our disagreement. And finally, we got so violent about our disagreement we decided to settle it like men, you know, and we went outside to further the discussion. And when we came back, of course, the engineers who were there without their lawyers, had solved the problem.

I remember thinking, "What were they doing that we didn't do?" And so I guess what I look for is somebody who's willing to be, you know, open and honest, be all the things that are hard for a lawyer to do. You know, those things they tell you not to be, you know, to be closed and in essence dishonest.

And you have to kind of unlearn these things, you know, and as a lawyer, begin to appreciate openness and honesty as being the most efficient transfer of information. And the sooner you have information, the sooner you can look (inaudible) the past and solve the problem. Difficult thing for lawyers to figure out, and it's taken me a long time to appreciate that.

So, what you want to do as a lawyer -- the worst thing a lawyer can do, I think, is to close their expert and to begin to look at the facts as something that's fungible, you know. And I think as soon as you do that, you do a discredit to the science, and you do it to discredit to the profession, and of course, you're dishonoring the truth, which is denying you, your client and everyone else an insight into the solution to the problem.

MR. CIRESI: Well, I look for certain things. First of all, I would like the experts to be highly knowledgeable, and secondly, that they be independent. In other words, they do their work on the scientific matters. I like their knowledge and their independence to be recognized by their peers; someone who is recognized as an independent expert.

I don't want a professional expert. By that, I mean, someone who testifies constantly in cases. In some intellectual property cases on damages, it's hard to get away from that because there's a certain number of people that do that, but in this field, in public health, and in most fields, product liability cases, etc., I don't want a professional expert. They carry too much baggage, frankly.

And finally, and most importantly probably for persuading, because -- keep in mind, when you try a case, it's not just what you know. You have to have the case developed properly. But you can have

the greatest case, the greatest idea in the world. If you cannot make it understandable, if you cannot convey that to the trier of fact, it's not worth anything.

So I want an expert who I call forensically attractive, who can testify, who is down-to-earth, doesn't talk in language that no one understands, can take complex issues and bring it down to where we all understand it. And I use myself as the lowest common denominator. I figure that if I understand it, then the jury's going to understand it, because I can then help this expert convey it.

And I found that to be the case, and no matter which discipline you get into, if you roll up your sleeves and really try to understand the technology, you're gonna be able to do it. But you have to write down - you know, as a lawyer, I write down the questions that I had when I was learning the area, because I believe that the judge or the jury will have the same questions I did.

For example, in a camera case. You know, why is the image upside down at the film plane? Why is that little tree upside down? I don't understand that. And then they explain that to you. Because a juror may have that same question.

And when you then watch the trier of fact, the expert should be the one testifying. You can step back and you can watch the jury. You can see when they have those questions. You can say, "Well, you know, Mr. Smith or Ms. Smith, what about this? I mean, why is that this?"

So, forensically attractive is absolutely essential. Because if you have all the other criteria, you know, you're knowledgeable, you're independent, you're recognized as an expert, you're not a professional testifying expert, if you have all those and you can't convey what you're trying to convey, it's not worth it.

MS. PRAEGER: I think we are out of time. We will have a short break and then concurrent sessions will begin. But, I want to thank the audience for the great questions, but especially the panelists for motivating a good discussion.

END

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