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How a Single
Court Case Can
Change the Lives
of Thousands.

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with **LAURA MORTON**

INTRODUCTION

I hadn't expected to take on the Castillo case, a case that became a landmark in several ways in how cases are heard. I explore this case, my own background, and the outcome of the hearings, in my book *Blindsided*, from which this white paper is taken. But here, I'm going right to the heart of why I took on this case to begin with: the importance of giving back.

Cases such as the Castillo case, cases that pit individuals against corporate behemoths, are expensive and quite hard to win. But they are necessary—not only for the plaintiffs, but for a lawyer such as me, who needs to be of service to others.

Of course, I'd helped people in my profession, and I'd done a lot of good. But at some point a case comes along where you will be tested, and you will have to decide if you want to be true to your calling—because it's you who must live with your decision.

At the time of my taking on this case, my law practice was doing quite well, and I didn't have to take on a case that would be costly and time-consuming. But then, I wouldn't have been true to the things I'd learned, or to my nature as a lawyer.

It's important to realize how necessary it is to be aware of why you do what you do, and what purpose you serve. This case showed me that, in many, many ways.

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Chapter 1

Beginnings

It was another habitually late night in the office in June 1993 when I heard my private phone line ring. I was working on an important and time-consuming case. Although I rarely answer my own calls, even after hours, for some reason I reached for the receiver.

“Hello?”

“Hercules. How ya doin’, man? Look, before you say anything, I have a favor to ask.”

It was my longtime friend Mark Eichberg. We first met in college and became good friends back in the early 1980s when I was an accountant. He and I used to work out together a lot, so we started calling each other Hercules.

“What’s up, Hercules?”

“Listen, I work with this guy, Juan Castillo. He and his wife are desperate to hire a lawyer. You’ve got to see them, man, and hear them out.”

The truth is, I hated getting these types of calls. They usually led to some bullshit case in which I had to explain to the family sitting across from me all the reasons why they had no claim or recourse in the judicial system. I didn’t like being the bad guy delivering that kind of news. I understood how personal these situations were to people. I dealt with them every day.

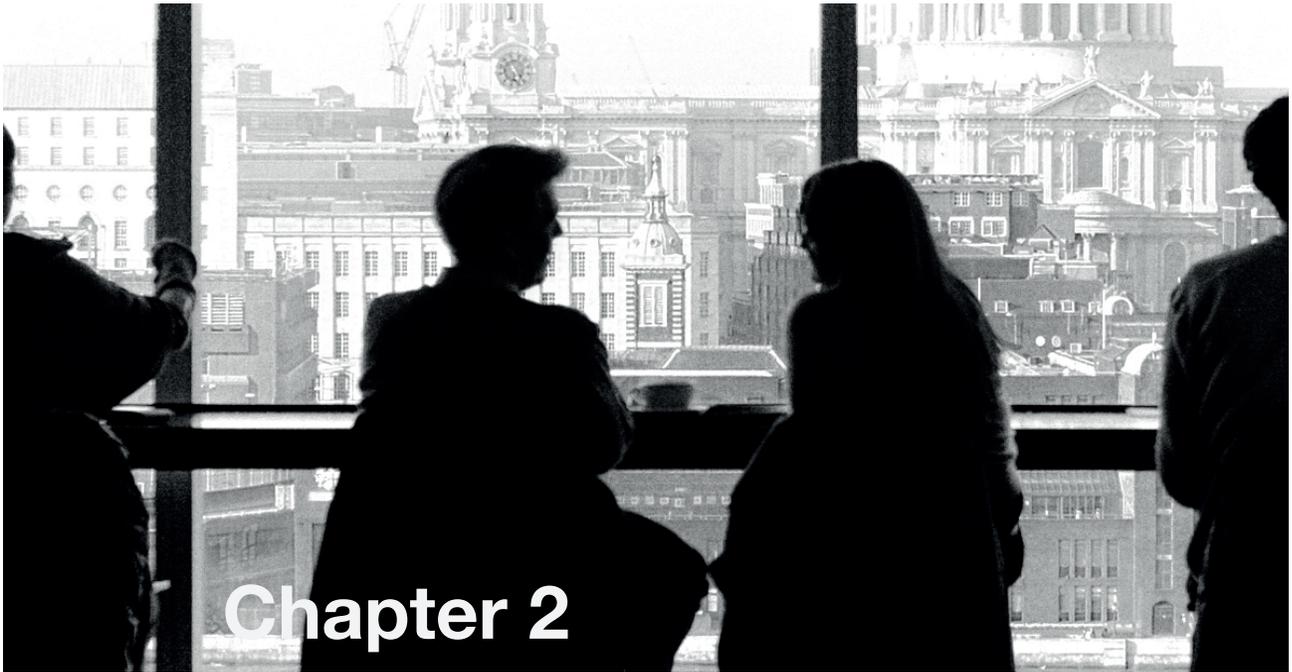
But I also knew the process, and most of the time it wasn’t anything like the glorified, glamorous version we all see on TV. Besides, it wasn’t as if I was hard up for work; in just a few years, my small law firm had grown exponentially. I went from representing a hundred people to advocating for several thousand in liability cases largely related to asbestos-induced diseases such as mesothelioma, lung cancer and asbestosis. I’d also done some work on a variety of medical malpractice cases, mostly representing the plaintiffs. These cases were often hard to win, but that’s what made trying them so appealing to me.

I enjoy a good challenge, and in a field where a lot of my colleagues tend to stick with the same kinds of clients and cases, I appreciated the difficulty in pursuing different types of cases.

From a lawyer's point of view—or at least from my personal perspective—there's nothing more exciting than building a case piece by piece, convincing a jury you are right, and then having them put a high dollar value on something as painful as watching someone you love suffer long and hard before they eventually die from the disease in question, or in many cases enduring that pain themselves before they die. This is my art—an art that takes a great deal of skill, thoughtful strategy, and determined precision to win.

And I love to win.

Yeah, business was booming. I didn't have the time or the interest to take on dead-end cases. Even so, Mark wasn't the kind of friend I could say no to, so I reluctantly agreed to set up a meeting with the couple he was referring to me.



The Castillo Case

When Donna Castillo first walked into my office, she struck me as demure and fairly typical of the people I met and represented every day.

Her husband, Juan, a Cuban-American, worked as an accountant at a pension company. Donna was a former schoolteacher born and raised in Massachusetts.

She had sandy brown hair and spoke with a thick New England accent.

She and Juan met in Florida and had made a home for their family in Kendall. At the time, the area was part of unincorporated Dade County, which comprised mostly farmland. I used to go for long runs out that way in the early '80s, so I knew the city well.

As Donna began to share more about her life, she spoke of her and Juan's two young children, a 6-year-old girl named Adrianna and their 3-year-old boy, John. She described what appeared to be a very loving, close-knit family, although I could tell there was a painful, underlying strain there. You could see it in her eyes.

“Tell me why you're here today,” I said.

Donna spoke softly as she did her best to fight back tears.

She told me that on approximately the first or second of November 1989, she had decided to take her young daughter for a walk in her stroller to get some fresh air. As they passed by Pine Island Farms, a typical “u-pick” field usually full of strawberries and tomatoes, she noticed that a tractor had become stuck in the mud.

The sprayer attachment had a big wingspan, close to thirty-six feet end to end, and it was spraying a clear, odorless liquid as it thrashed uncontrollably about.

She stopped for a brief moment and watched the driver of the tractor try unsuccessfully to maneuver the vehicle out of the soaked ground. It was a relatively windy day, and at one point the gusts shifted in such a way that Donna became wet from the spray.

Since the liquid didn't have any noticeable color, smell, or taste, she assumed it was just water. She was eight or nine weeks pregnant, and though she wasn't terribly concerned at the time, she went home and shared her experience with her husband. He agreed that there was probably nothing to be worried about.

Just to be certain, Donna went to the obstetrician the next day. After listening to the details of her encounter, the doctor came to the same conclusion. The farmer must have been watering his crop, as there was no obvious evidence of any chemical use.

Seven months later, Donna gave birth to her son, John. She and Juan had expected a perfectly healthy child because there had been no sign of any problems throughout the pregnancy. The reality in the delivery room, however, was quite different. The couple was horrified to learn that John was born with no eyes. They had no idea what had caused this rare birth defect. In time, I would learn that when a child is born with no eyes, the condition is known as anophthalmia. Similarly, when a child is born with only residual tissue in place of his or her eyes or with abnormally small eyes, this sister condition to anophthalmia is called microphthalmia. Although Johnny had no eyes, he did have a tiny cyst where his eyes should have been; thus, his condition was classified as microphthalmia.

“The condition is incurable,”

Donna said, now sobbing as she pulled a small photo of the baby from her purse.

She told me that while Johnny could someday be fitted with glass prosthetic eyes, he would never be able to see. Not only would he be blind for life, he was permanently disfigured.

This discovery was shocking to the Castillos. They certainly weren't prepared for life with a blind child. The condition is so rare that they wanted to find answers. What could have caused this? Was it something Donna could have prevented? Was it genetic? She told me about a British support group she became involved with called Microphthalmia, Anophthalmia & Coloboma Support, also known as MACS. There were 165 other families enduring a similar journey, and she found great support and comfort through their mutual connection.

As I listened to Donna share her story, I couldn't help but think of my own son Andrew. He was the same age as little Johnny. I glanced at my boy's photo, which sat in a frame on my desk. There he was, a beautiful, healthy kid. I got to go home every day and see him, and by the grace of God, he got to see me, too. I couldn't fathom what life would be like if any of my children—Andrew; my oldest son James, who was then seven; or my daughter, Alexis, who had been born just months earlier in January—were suffering the way Johnny was. My heart was genuinely broken for the Castillo family. They were humble people. Good people. I could see the anguish this had caused them. And yet I still wasn't sure why they were sitting in my office that day.

“I’m sorry about your son,
I really am; but I’m still
unclear as to why you’re
here,”

***I said. I wanted to be compassionate and understanding, but I’m a trial
lawyer, not a therapist.***



Other Cases

That's when Donna told me about an investigation the London Observer and the BBC were both conducting.

It was focused on a cluster of kids born without eyes in Fife, Scotland. They all lived in an agricultural area where farmers frequently used a chemical called carbendazim. Although sold under a different trade name, this chemical is similar to one made by DuPont called benomyl, the active

ingredient in a product known as Benlate.

At the time, Benlate was the bestselling and most profitable agricultural product DuPont was selling worldwide. Pregnant women working with these products—primarily migrant workers—were giving birth to children with Johnny's affliction. A 1993 documentary called *Field of Dreams* followed the stories of these women and their children.

John Ashton, an investigative reporter from the Observer, was digging deeper into the subject, contacting farmers and families to see if he could connect the dots. He got in touch with Donna and asked if she had lived near any farms when she was pregnant with John.

She had.

He asked if she had ever been sprayed by a foreign substance near one of those farms.

She had.

Donna said that after she gave Ashton all the details of that fateful day, it suddenly occurred to her that she, too, may have been the victim of this type of chemical exposure.

When Ashton followed up on Donna's story with Lynn Chaffin, a field manager from the farm where Donna had been walking on the first or second of November 1989, he asked if Benlate had been used on the field crops on or about that date.

Chaffin said yes.

This would be a pivotal piece of evidence if there were to be a case going forward.

I suddenly understood why the Castillos were in my office that day.

They wanted to go after DuPont.

Holy shit.

In 1991 Benlate was alleged to be contaminated with another DuPont product, weed killer sulfonylurea, which was the most potent herbicide known to agriculture.

More than 2,100 growers nationwide said that tainted Benlate ruined millions of dollars in plants and left thousands of acres of land unusable. DuPont paid more than \$510 million in damage claims until it abruptly stopped payments after it said its own tests showed Benlate could not have damaged plants. The grower's lawyers said that DuPont had defrauded both growers and Federal regulators by hiding its knowledge about the product's defects.

While this case showed their product caused harm to plants I had never heard of it doing damage to people—or, more specifically, causing harm to unborn embryos and fetuses.

At least, that was the case before the Castillos entered the picture.

There had never been a jury verdict rendered anywhere in the entire world against a chemical-producing corporate giant like DuPont for developing products that caused birth defects of any type.

It was now clear why every other lawyer the Castillos went to before me had turned them away.



Going Up Against a Behemoth

They didn't stand a chance of going the distance against a behemoth like that. They surely didn't have the money or the stamina it would take to stare down DuPont, let alone win. They needed someone stupid enough to take the case and then finance it, too.

At the time, I was well on my way to becoming a wildly successful trial lawyer. But I was a bit of an oddity. I say that because

all the successful trial lawyers I've ever known or heard of began their careers working under a mentor.

I didn't.

I started my law firm two years out of law school and was never mentored by anyone. I would learn to prepare my witnesses, opening statements, and closing arguments by reading books and memoirs by the legendary trial lawyers of the past.

I would simply take what I liked from one, add it to what I liked from another, and then layer a little bit of my own insight on top.

Maybe not having a mentor to talk me out of it is what made me both naïve and brazen enough to take on a case like the Castillos'. I was free to do it if I wanted. I didn't have to answer to anyone else.

Besides, at the time I was also very idealistic—almost to a fault.

I consider myself very lucky to have represented so many people who didn't stand a chance to win without me. I've not only helped change the lives of those people but I've also had the good fortune to make a lot of money doing it.

Naïve or not, one thing was very clear after hearing Donna's story: everybody on the street is a potential victim of chemical exposure like Donna endured that day.

By not even thinking about the potential damage they were causing, DuPont—and the farmers using their products—were operating with a total disregard for the public. Worse, they didn't seem to care. If the DuPonts of the world had their way, everyone would be considered human guinea pigs, much like the Castillos were.

The biggest problem this beleaguered family faced was proving it.



A Difficult Case

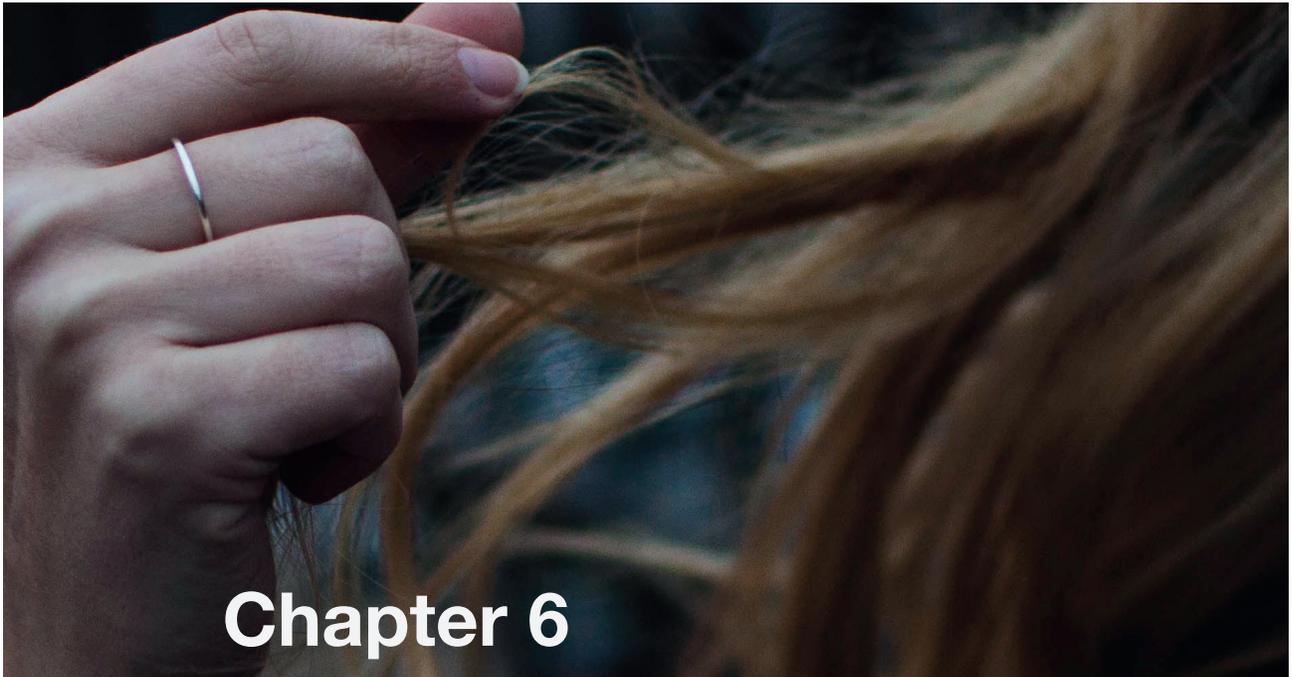
Chemical cases involving birth defects are almost impossible to prove. While human test trials are done to determine whether a new drug is beneficial or harmful to people, there are no such trials for chemicals. The reason is very basic: no possible good can come from testing chemicals on humans, and in particular on pregnant women. It is simply unethical to perform such tests. This is the challenge with Benlate and benomyl.

You simply can't spray potentially dangerous chemicals meant to kill weeds or enhance crop growth on pregnant women to see what will happen to their unborn children. There's absolutely nothing positive that can result from a study like that. Because there is no possible benefit, human test trials—which would be the best indicators of potential birth defects—are not only unethical, they're prohibited.

By comparison, when a pharmaceutical company screws up and damage to humans results from one of their drugs, it's much easier to build a case against them, because data can be gathered from the controlled human test trials they typically run.

It's allowable to test new drugs on humans because it is generally understood that the possible benefits outweigh the risks. For example, when it comes to treating cancer, the prevailing view is that any new drug with the potential to kill the deadly cancer cells is well worth testing even if some people will be harmed in the process. Such trials are critical to moving medicine forward, which makes them invaluable.

That is very sound reasoning. With chemicals, however, the only allowable testing is on human cadaver skin and cells (not living people), and on animals. This plays right into the hands of the DuPonts of the world. It makes it very easy for them to be irresponsible. This inherent limitation in testing makes it possible for companies with potentially toxic and harmful products to get away with selling them to the unsuspecting public. Even when faced with living examples of severe human damage, companies such as DuPont are willing to sacrifice a thousand Johnny Castillos before they'll toss in the towel. They believe they should be able to sell their products, toxic or not, with very little regulation.



Chapter 6

The Impact on the Family

I was curious about how a victory against a behemoth like DuPont would impact this family. How would it make their lives different?

Donna explained that if they won, Johnny could get the education, develop the skills, undergo the therapy, and secure the devices necessary to meet his special needs. This would make his life much more bearable.

“Juan doesn’t make that much money, and our wish—our hope—is to send our son to the Perkins School for the Blind,” she said.

I knew the Perkins School was very expensive.

There was no shot of little Johnny going there unless they won this case.

As I held Johnny's photo in my hand, again I found myself thinking about my own children. I wondered what I would do if this were my son. I admit, this case represented everything I loved about being a lawyer.

I wasn't as humble as the Castillos.

I'd want vindication by proving this company had fucked up. I'd want to show the court that, without any question, it wasn't something my wife did that caused my child's condition. It wasn't her mistake, but rather the fault of someone who thought they could get away with causing this type of harm because they weren't being held accountable for it.

Shit.

This family needed me.
It would be challenging, make no mistake about it—this was a real-life David-and-Goliath battle we were about to wage.
It would take a miracle to win.
And it had my name written all over it.
“Let me get this straight,” I said. “You’re asking me if I’ll represent you against DuPont?”
Donna stared back at me, wiping away her tears with a handful of tissues she took from the box on my desk. She appeared so helpless.

“Yes, Mr. Ferraro. That is why I’m here,” she said quietly.



Whether to Represent the Family or Not

I sat still for a moment, contemplating my next move. I looked at Donna, who was so sad. I'm not good when people cry. I'm a sucker at pity parties and usually play right into them, especially when it comes to women.

But this was different.

In this case, I genuinely felt empathy for Donna and her husband. I wouldn't want to be in their shoes or trade the good fortune I had with my three healthy children for the challenging life

they faced with their daughter and sightless son.

There have been many times in my career when I've wanted to take on cases despite the fact that I knew they were unwinnable. Times when I was sure an injustice had occurred but suspected the odds were against me. Times, for instance, when multiple companies were dumping toxic waste in the same place, so there was no way to prove whose fault it was.

Times when I had the desire to be a hero but still had to tell victims who'd suffered horrific consequences to get on with their lives even though their time was surely limited and their quality of life would never be the same.

That doesn't get any easier for me. And yet sometimes it's the only advice I can offer, because there is no other solution.

I started to give Donna my usual spiel. I wanted to encourage her and Juan to put this ordeal behind them and move on with their lives. I explained that sometimes things happen, and we may never understand the reason or purpose. These are things that are out of our control. They're in God's hands, and we have to trust in Him.

But that wasn't the way the Castillos' story would end.

I knew it, and so did they. I was doing my best to sound compassionate and sympathetic. Even as I spoke,

I felt something rising
inside me.

I recognized that nagging feeling I get when a grave injustice has been done, the certainty that I can make a difference in someone's life if we pursue a case together.

But I didn't want to drag the Castillos into a five-year battle they would most likely lose. It would be the worst emotional roller coaster they'd ever go on. I knew that. I sincerely didn't want to engage them in the battle if they couldn't win the war. That's what happens. People become so obsessed with the fight along the way that they run the risk of being totally devastated by the final outcome.

I understood it was a difficult, if not impossible case at best, and yet if I didn't take this chance, I was certain no one else would, either. The family had already been to several much larger law firms—firms that could bankroll a case like this with more ease than I could—and were turned down by every one of them. It was lunacy for me to take this on.

This situation seemed to shout, "Run for the hills!" but still I found myself running toward the Castillos rather than away from them.

I knew this case could potentially take years to win. I also knew it would cost my firm hundreds of thousands, if not millions of dollars to prepare—money I was likely never to see again. One thing was for sure: it would definitely be a long, uphill climb.

Still, something inside
told me I had to say yes.

I liked taking on new cases that would be interesting, stimulating, and different. It made my job a lot more exhilarating. Also, I liked the competitive challenge of entering groundbreaking territory, especially when I took on cases that everybody else said no to.

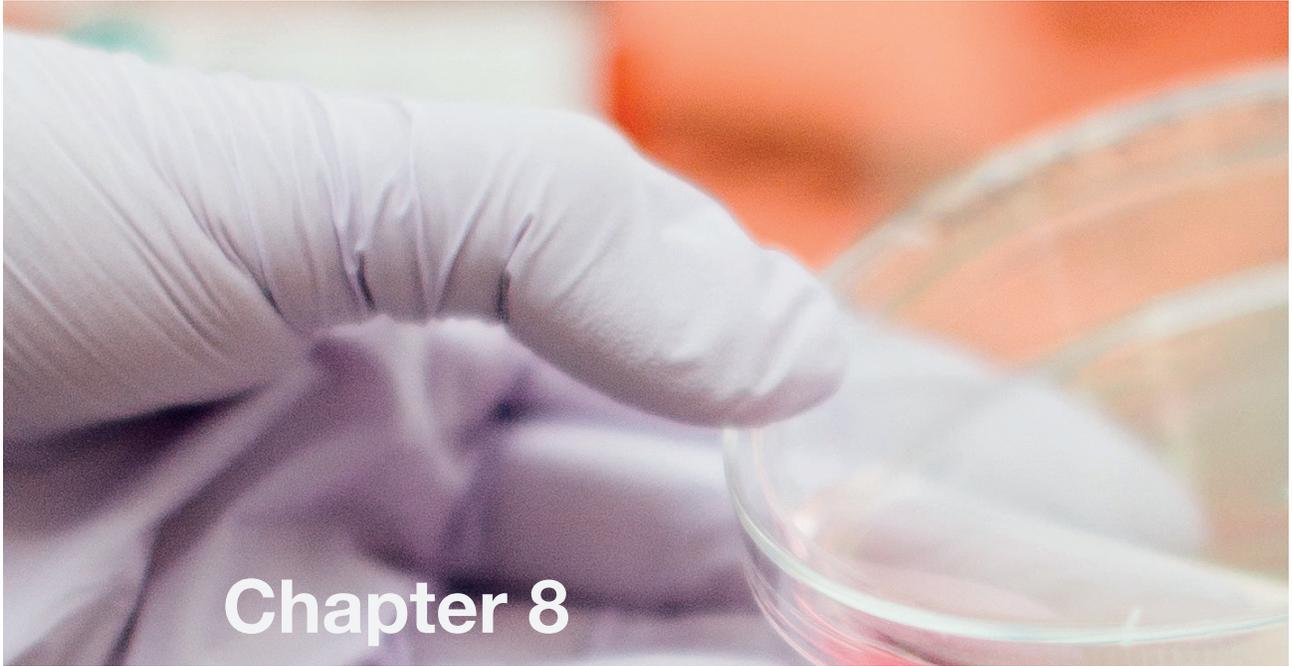
Where's the glory in taking on another case exactly like the last one you won? To me, there is none. That kind of path creates complacency and laziness.

There was no precedent here, no road map to follow for a case like the one the Castillo family presented.

No one had ever taken on a case like it and won before me, and, frankly, no one's been able to repeat that success since.

The Castillo family finally had someone who would fight on their behalf.

Yeah, I was their guy.



Chapter 8

Checking on the Science

“Here’s what we’re going to do. I’ll look to see if there’s any science out there to support us. It’s going to be very difficult to make what’s called an actual-knowledge case against DuPont.”

I explained that an “actual-knowledge” case requires us to prove that DuPont actually knew

how bad this chemical was, yet still allowed it to be sold and used.

They would lie their asses off—they’d cover up and hide any corporate knowledge they had.

There was another way to build and win a case like this in certain states, however. I’m licensed to practice in several states, and thankfully, Florida is one of those states.

Florida allows litigators to argue a “state-of-the-art” case. In a state-of-the-art case, companies like DuPont are expected to have expert knowledge of how bad their product is based on the state of the art or science that exists at the time they manufacture, sell, or distribute the product. Since they designed and made their product, the law assumes they have such expert knowledge.

Business had been booming at my firm for a while. I hadn’t been making big money for that long, but it had been long enough to know that despite the potentially massive out of pocket costs my firm would incur, I couldn’t think of letting this family walk out of another lawyer’s office without at least looking further at their prospects for success.

Although I still wasn't completely convinced I should take the case, I didn't hesitate to tell the Castillos that I was ready to explore the possibilities.

After all, I had access to a medical librarian in Washington, D.C., who could easily help me find whatever studies existed on benomyl and Benlate.

I was more than willing to call her to see where this would lead. The family had surely been through enough over the past three and a half years. What harm could waiting a few more weeks do?

“If I find some science out there—anything that supports this claim—I’m totally in,” I said.

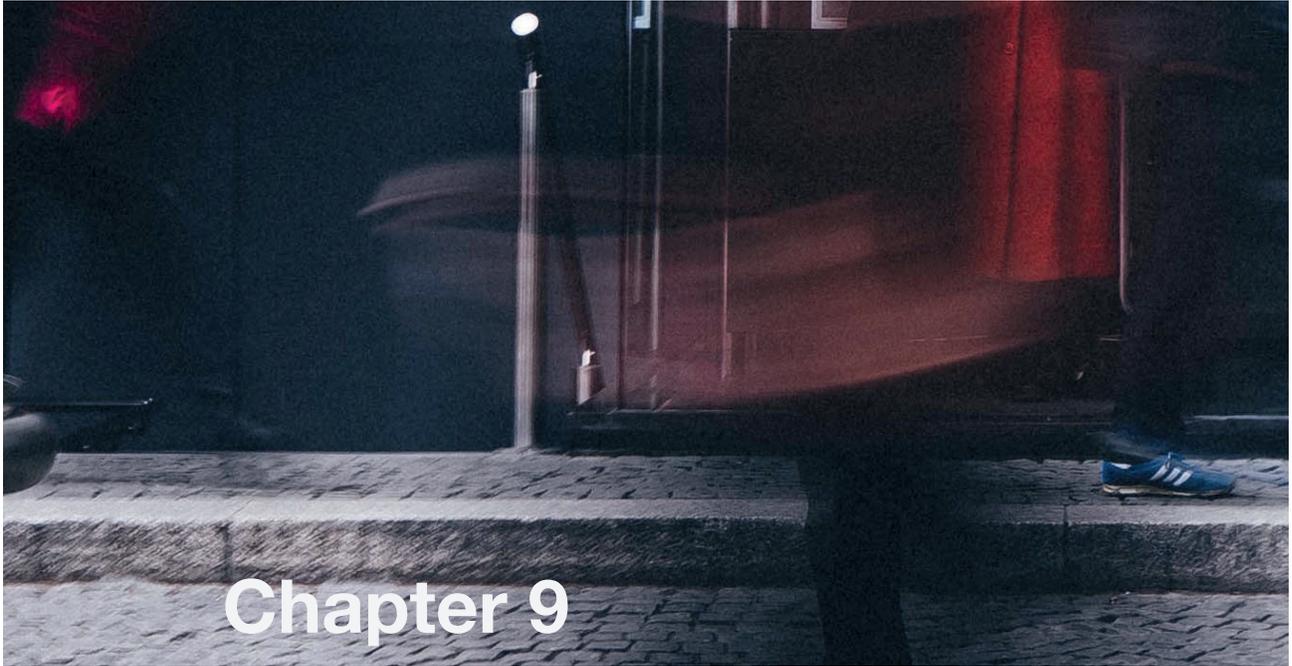
“Let’s see where this goes.”

Here's what we uncovered in our search:

- DuPont created the product Benlate.
- The active ingredient in Benlate was benomyl.
- We discovered that benomyl was tested on pregnant rats at the University of California in 1991.
- The results were really bad.
- Some 43% percent of the rats' offspring were born with ocular abnormalities such as having no eyes, blindness, and other related eye conditions. Worse, if the rats were fed a protein-deficient diet—which is common in low-income households such as those of migrant workers—the percentage of ocular issues jumped to 61 percent!

Based on this study and the timing of Donna's exposure, I decided I would take the case. Even though the risks were astronomical, I thought it was worth a shot.

I called the Castillos and asked them to come to my office.



Chapter 9

Taking on the Case

“I won’t make any promises,” I told the Castillos. “But if we win, my fee will be a percentage of the money the jury awards you so I’ll be able to make a fee and recoup my costs. If we don’t win, I’ll get no fee at all and won’t recover my costs. This pursuit isn’t going to cost you a thing. How does that sound?” I asked.

Donna couldn’t contain her emotion. She broke down and began to cry again. But this time, they were tears of joy. At least I hoped so. She thanked me over and over again, because not only did someone finally hear her, someone was also finally willing to undertake the fight and fearlessly lead the family through the darkness.

I wanted Donna and Juan to know I was in their corner and would act as their advocate for as long as it took to bring DuPont to justice.

As righteous as that may sound, I meant it.

Sometimes you have to look at more than the bottom line.

The thing is, in law, as in any profession, you want to do your best to make a difference. At least I do.

My father had a need to help people who were down on their luck, whether it involved giving a meal to a homeless man on the street or lending a caring hand to someone who just needed it. Although he could be very tough and demanding, he also had a very big heart. Because he grew up without very much, he knew what it was like to go without or have needs that couldn't be fulfilled.

Seeing my dad's charitable ways greatly influenced me to act the same way. I share his need to help others, especially those who are less fortunate or who simply can't do what I can do or have what I have.

In life, when you're generous with your resources, whether money or time, you eventually learn that you're not really giving it away, because you always get it back one way or another. It's that old saying: "What goes around comes around."

A lot of people choose a career for the money, but there are those who also want to add value to others' lives. They want to be legends, to build a legacy to be proud of, to effect change in the system, and to make good things happen all around them.

I admired attorneys like Ron Motley, who was a pioneer in asbestos litigation and the catalyst that ultimately brought Big Tobacco to its knees. I greatly respected his willingness to take on a cause regardless of potentially insurmountable odds.

I am inspired by people like Ron, whose purpose was to take down the three-headed monsters—like the “Big Three” tobacco companies—of the world. I strive to be that type of person every day. Some days I may fall short, but on most days, my aim is true.

I said good-bye to Donna and once again reassured her that everything was going to be okay.

Later that night, when I looked into my sons’ eyes, I got all the confirmation I needed.

There was no doubt about it—I'd made the right decision to help the Castillos. After I shared the story about Daddy's new case and the little boy who was born with no eyes, my youngest son, Andrew, looked up at me and asked, "**What do you mean he has no eyes?**"

I could tell he was confused by the notion.

"How could something like that happen?" My older son, James, asked with equal wonderment.

I told them both not to worry. I explained in no uncertain terms that Daddy was going after the bad company that sold the dangerous chemicals that caused this boy's mother to get very sick while she was pregnant—so sick that when the baby was born, he had no eyes.

“Wow. I’m so lucky that didn’t happen to my mommy,” one of the boys said.

Amen to that.

I was primarily drawn to the Castillo case because of the massive challenge it presented. Once again, I was confronting the bully. The thought of slaying the dragon—which is how I referred to DuPont at the time—was really appealing to me. From a career point of view, if we prevailed, it would surely be my biggest and greatest conquest.

This drive to win was cultivated in me by my father, who always demanded more from me than even I knew I had inside. But the idea of winning wasn't the only thing motivating me. Making a difference in the lives of people who had possibly been impacted by the chemical Benlate was big.



Chapter 10

Making a Difference

I had already made a difference in lots of people's lives before this opportunity came knocking. I'd tried asbestos cases in the past, which resulted in many people and their families being able to live comfortably for the rest of their lives, even though many of those lives were already limited by the time we went to trial. Winning the case was their last hope.

That's a heavy load to carry on one's shoulders, but I didn't mind. It was worth it if I could, in some small way, make my clients' lives and deaths easier.

Several years before the Castillo case, I represented a client named Vinny Casasanta in an asbestos case. Vinny was a super nice guy—one of the nicest people I've ever known.

When we met, he was fifty-one years old and dying from mesothelioma. The first time Vinny and his wife came from their home in Connecticut to see me, they stayed at the Fontainebleau, the same hotel they had honeymooned in many years before. Their trip was emotional for a variety of reasons, but mostly because this would be their last hurrah, and they knew it.

Throughout his career, Vinny had worked with a toxic fireproofing spray made by W. R. Grace, a high-performance specialty chemical manufacturing company. That was our target. It was the early 1990s. I was seeking at least a \$10 million verdict against the company, and at the time, I believed we had a very good chance of winning.

The case was set to begin on a Monday.

The Friday morning prior, we received an offer to settle for a little over \$1 million. When I initially shared the offer with Vinny, he had absolutely no interest in accepting what I considered to be a paltry amount. He also worried that there wasn't enough money in the settlement for me. I assured him that he should not be concerned about me—I had lots of other cases, and the decision had to be his. I firmly believed we had a very good chance of getting at least \$10 million. I didn't think Vinny would settle. I felt he'd go all the way. I was fired up to win for him and it would have been a very big verdict.

I liked Vinny from the start. He was a hell of a nice man, and someone I still think of as a dream client for many reasons. It appeared as though we were on the same page until my phone rang two hours later.

It was Vinny. He and his wife had talked it over and decided to settle for the million-plus dollars that was on the table. He talked about the little addition he wanted to build on their house and then told me all about their grandchildren. After discussing it with his wife, he said he could rest a lot easier knowing the money would keep her comfortable for the rest of her life.

“I know I won’t be
around to do that, Jim,”
he solemnly said.

When I heard that, I knew we were done. I didn’t even try to talk him out of his decision or sway him the other way.

I called the attorneys for W. R. Grace and told them there would be no trial—the case was over. They knew they got off easy, and so did I. I sat alone in my office feeling very down, because at the time I thought this was a dream case for me and now it wasn't going to happen.

I was absorbed in my own self pity and vanity.

A few hours later, my phone rang again. It was Vinny. He was crying this time.

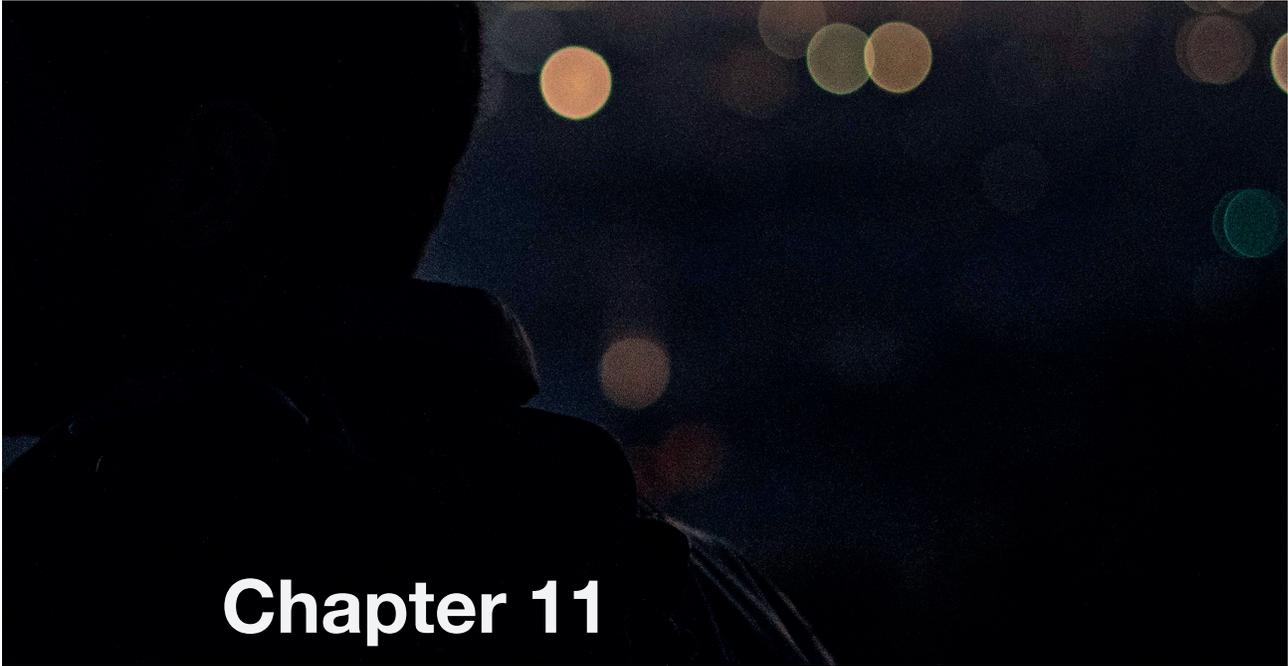
Before I could ask if he had changed his mind, he told me what a difference I'd made in their lives. The money would change everything for them during the limited time he had left.

“I'm at peace, Jim,” he said.

And in my heart and soul, I could feel that he was.

It was that exact moment when I realized how wrong I'd been in my assessment of this case.

It wasn't about me.
It was about Vinny and his
family. Giving them peace
was exactly what my job is
all about.



Chapter 11

It's About the Client, Not About Me

Each case I take is someone else's dispute. It's my temporary battle to fight on their behalf, but in the end, it's their quarrel—not mine. It's their monkey, their circus. I am merely the ringleader.

A massive verdict is more about ego than anything else. My job is to get the best possible results for my clients. It's about their happiness. Not my vanity.

That's it. Nothing more; nothing less.

Getting that last call from Vinny gave me more satisfaction than being awarded a large sum of money on their behalf ever would have. I get a high from helping people. You could say it's my drug of choice.

There's no better or more infectious feeling than knowing people are happy because you helped them out of their crisis. This case greatly influenced my way of thinking and how I moved forward in my career.

And what a roller coaster it has been.

There are three rules I live by in life.

- The first is "There's nothing wrong with having fun."
- The second is "Try not to hurt others."
- And the third is "Help as many people as you can."

To me, the third is the real scorecard of my time here on earth.

Whenever I think about the day I'll finally meet my Maker, I wonder whether I will be leaving the world a better place because of my contributions. If the answer is that the world is the same or worse as when I entered it, well, then I didn't do enough. At least, not by how I measure things. Then there is the karma.

By the time I took the family's case, I was making more money than I needed. Giving back had become extremely important to me. Anyone can write a check when they have the money in the bank to cover it, but giving your time, energy, and attention requires a different type of commitment. I understood that this type of case would be costly in both money and time.

As a way of covering or hedging our bet, the firm also took on the cases of the 29 Scottish families in the MACS support group for a future fight against DuPont, because we knew the chances of winning the Castillos' case in the first trial of its kind were, realistically speaking, remote. Taking on the additional families meant even more time and money would be necessary to see this battle through to the bitter end.



Chapter 12

Long Odds

At the time, no one had ever won a first-impression toxic tort case, whether it involved asbestos, tobacco, or some other drug or chemical.

A first-impression tort case, as the name implies, involves a new cause of action that has never been brought by anyone in any court anywhere.

It typically takes many trials before you can taste victory in a new tort claim.

For instance, asbestos took Chapter 10 trials before there was a first win by my friend and legendary trial lawyer Ron Motley, whose work had inspired me for years.

Every new trial represented an opportunity for those pioneering lawyers to find more documents and testimony and hone and refine their arguments, and therefore create and present a stronger case.

Let's face it: it was obvious from the start that the Castillos' case had the potential to lead me into the land of infinity.

Because there had never been such a case before, there was no template we could use or improve upon in our fight against DuPont. It had corporate lawyers on the payroll, ready to answer calls day and night. Those attorneys were hired to crush guys like me under mounds of paperwork, document searches, filings, and costs.

This left us with no choice but to chart our own course and navigate the treacherous terrain on our own as best as we could. I knew I couldn't let the process go on forever because I had other clients whose needs were equally important, but I was sure there wouldn't be a quick settlement, either.

I went into the case knowing that DuPont was counting on us eventually backing down. That's what they plan for. They certainly would try to create as many roadblocks as they possibly could during the discovery process to make this matter go away.

To them, we were like an irritating pimple on their ass.

To cause them excruciating pain, we would not only have to win on our first try, we'd have to win big.

Of course, both of those prospects were unprecedented, and I knew it.

While Donna showed me pictures of her son during our first meeting, it wasn't until the third time I met with the Castillos that I really saw the photos of Johnny. He was a cute kid, with blond hair and an infectious smile. He looked totally normal except that his eyelids were closed—and there was nothing behind them. They weren't rounded like my son's lids are when he's sleeping. At the time, only 1 in 10,000 babies worldwide were born with microphthalmia.

In the courtroom, you can use various types of scientific findings to back your claim. Animal studies and human studies are the major types of cited research.

The reality, however, is that animal studies aren't always predictive of what the impact will be on a human. What we do know, though, is that the reactions of rats and primates to most chemicals and drugs are closer to human reactions than any other animals' reactions. For instance, a reaction found in a rat will appear in humans 80 percent of the time.

Animal studies are significant in cases like the Castillos', and yet when it comes to presenting them as evidence during the trial, they aren't weighed nearly as strongly as they should be. Courts won't allow a case to be built solely on animal studies. Through the years, the courts—and in some places legislatures—have cut back significantly on what is admissible science in the courtroom.

The DuPonts of the world have expended enormous sums of money to protect themselves in the courtroom by having a lot of science excluded from the courtroom. On one hand, a company like DuPont will submit these kinds of studies to the EPA to get a product licensed. But when they get sued over the product's safety and the injured party seeks to admit into evidence the same study that the manufacturer presented earlier to the EPA, the study is suddenly called "junk science."

My case with the Castillos took on all of this and more—and in the end, despite the arduous nature of the preparation and the trial, it was worth it for the peace of mind it brought the Castillos, and the changes it brought to how science could be used in the courtroom.

But that was all a long
way away.