

Syracuse University
College of Law
Legal Writer's Toolkit

Focus Questions for Exposure

These focus questions are intended to aid you in the active reading of Robert Bilott's "Exposure," one of the books selected by the faculty of the Syracuse University College of Law to help prepare you for your time studying law. This book was chosen by Professor Paula Johnson.

The questions are written with the intention of helping you. You won't be tested on your answers and you can feel free to read the book without them should you choose. And there aren't any correct answers for these questions. It's more important to question the text and reflect on what the answers might be than to seek for a definitive "correct" answer.

The questions are designed to model the process of active reading, which is a skill with which you should already be familiar. Active reading is a crucial skill for doing well in law school, and the more adept you become at it before you come to school, the better you will do during your time here. If you would like to learn more about active reading, there will be content discussing the topic in more depth on the Legal Writer's Toolkit site.

You shouldn't assume that these questions indicate a point of view or that they're trying to steer you to answer them in a particular way. Rather, they're intended to provoke you to think critically about what you read and to help you form your own conclusions, based on the information the author gives you about the topics discussed in the book.

We hope you enjoy "Exposure," and we look forward to meeting you and working with you over the course of the next few years.

Personal Note

I have written all the focus questions for the seven books in this alternative reading list, and have learned a great deal from each of the books we've presented to you. Until this book, however, I've had no personal connection to the subject matter in the books and have read them as an interested observer.

I am much closer to the action in this book, though. I had no involvement in the case the author describes, and did not represent any of the parties in it. But when I was in practice as an attorney, I worked as a corporate defense lawyer, mostly in medical device litigation. On one of the cases I worked, the author of this book's law firm - Taft, Stettinius & Hollister, LLP - represented a co-defendant and I worked with one of the attorneys mentioned in this book, Gerald Rapien, to defend our clients. Mr. Rapien and I were only two of many lawyers involved in the case, and we didn't work closely together, but I'd be remiss if I didn't mention my connection to the author's firm.

Also, the case on which I was involved with Taft, which was venued in Cincinnati where Taft is located, involved a claim for medical monitoring which, as you'll discover as you read the book, is a claim that is at the heart of much the litigation described in the book. In fact, by the time the author decided to pursue a claim for medical monitoring claim, Mr. Rapien and I had been working on a medical monitoring case for several years and I had written at least two articles that, in whole or in part, had discussed the medical monitoring claim at length. By the time the author, by his own account, first contemplated a medical monitoring claim, I was four months from leaving the practice of law and have not practiced law since.

I have tried to pose my questions for this book, as with the other six books, from a neutral perspective but I wanted to let you know that I was closer to some of the action and the issues in this case than you might have expected. In reading this book, I was taken back - vividly - to the life I lived while practicing law. The author and I might have been on different sides in complex civil litigation, but the stresses and strains of that life, and the time commitment to the work, are familiar to anyone who has lived in that world.

Finally, you might be interested to know that the story told in this book forms the basis of the movie "Dark Waters," starring Mark Ruffalo and Anne Hathaway. If you watch that movie, you might ask why it is based on a New York Times story about this litigation and not based directly on this book.

I hope you enjoy "Exposure." I can say from personal experience that it's a true-to-life evocation of life inside complex civil litigation.

Ian Gallacher

Author's Note

1. If anything should persuade you that this book was written by a lawyer, this note should do it. Note the lawyer phrases that crop up: “[o]ut of an abundance of caution;” “no person shall interpret anything in this book as representing or constituting any such waiver”. And “any and all such waivers are expressly denied.” If the rest of this book is written in the same style, will you enjoy reading it? What does that say about lawyers and the way they write? Will this be the kind of writing you learn in law school?

Dry Run

1. The first paragraph of this chapter - “No one would help him” - should relieve any concerns you might have had about the writing style in this book. The author is not going to use his lawyer voice for all of this book, and maybe that’s a good thing for your appreciation of what is to come. (And no, you will not be taught how to write in either the dry writing style of the “Author’s Note” or the more informal style used in the rest of this book while you are in law school. There’s a formal style that involves simple, plain English and easy-to-understand form, style, and structure that will form the basis of your legal writing studies).
2. Based on the author’s description of the condition of Dry Run as filmed by Mr. Tennant, do you think this book will present a balanced discussion of the issues involved, or will you be reading this from the perspective of one side in this case? Does that answer bother you or are you fine with the stance you imagine the author will be taking?
3. The author gives you Mr. Tennant’s full name - Wilbur Earl Tennant. Why does he do that?
4. The author, writing of Mr. Tennant, writes that “[a]nyone could see that something was terribly wrong, not only with the landfill itself but with the agencies responsible for monitoring it.” Why does the author write this on the sixth page of the book? Were this a trial, would the author be making a statement like this so early on? Would he be allowed to?

The Call

1. Put yourself in the author's place, personally and professionally, and imagine you'd received the call the author describes. How would you respond to Mr. Tennant?
2. The author says that he had trouble believing that DuPont was polluting Dry Run. But he has spent the previous chapter describing the reasons Mr. Tennant believed that there was pollution caused by DuPont. Why begin with the chapter describing what Mr. Tennant said, rather than with the chapter about his call with the author? Are you now predisposed to believe Mr. Tennant?
3. Does the author's description of the firm where he worked make this a place where you would like to work? Do you want to work as a corporate defense lawyer?
4. The author indicated to Mr. Tennant that he would listen to what he had to say. But now that they are meeting, the author is describing Mr. Tennant as "a client." Has something changed, or is the author foreshadowing a development that has not yet happened?
5. Had you considered that taking a case like this might prove difficult for the law firm where the author worked? Although DuPont wasn't a client of the firm (and if it were, the author and his firm would be prohibited from taking this case because of conflict rules) other clients might be disturbed by the firm suing DuPont. Should that be a concern for a law firm when considering whether to take a case? How do you predict the firm will react?

Parkersburg

1. The author has mentioned billable hours and the way firms like the one where he works make money. Based on an 1,800 to 2,000 hour per year expectation, how much does the author's 8:30-10:00 (or 11:00) schedule, six days a week, represent? Remember that the time he is working on Mr. Tennant's case is not billable time. Consider also that, on an average, attorneys can bill only around half of the time they spend in the office each day.
2. The author spends time telling us about Parkersburg and the importance to it of DuPont. Is this relevant to us now? Or do you think it will become relevant later in this narrative as a lawsuit against DuPont might threaten its role as a major source of employment in the town?

The Farm

1. The author describes his clothing and how out-of-place it seemed in rural West Virginia. But if the author had worn farm-appropriate clothes to a business meeting with his client, would his client have viewed that as acceptable? Do you see why clothing choices matter to attorneys, and how careful attorneys must be to balance professional appearance with the practicalities and sensibilities of those for whom they are working?
2. The author notes the differences between the way the Tennants told their story and the way lawyers convey information. Had you expected that there would be such a significant difference in the way lawyers express themselves and the way non-lawyers narrate events?
3. The author tells us of the death of a childhood pet on a visit to Parkersburg in 1981. This was three years before DuPont bought the land from the Tennants and started work on the Dry Run landfill, so the death of the dog can't be related to the alleged pollution. Why, then, did the author tell us of this detail? What relevance does the death of his dog have to the narrative he's telling?
4. The author recognizes DuPont's lawyer as someone he knew and respected, and observes that this "seemed to be a stroke of luck." What significance do you attach to the word "seemed?" Do you expect an amicable resolution of the issues in this case? Or do you anticipate that the relationship between these two lawyers might become frayed?
5. Having finally read the report of the Cattle Team, the author begins to suspect that his opposing counsel has been chosen because of his prior relationship with the author. Do you agree? Is this something you had suspected? If this is what happened, was it wrong of DuPont to select its attorney for this reason?
6. The author suspects that DuPont lured him into a trap by persuading him to delay discovery. Do you agree with him? Is it possible his decision to delay discovery was, in part, based on his lack of desire to engage in time-consuming and expensive discovery for which his firm wouldn't be paid because of the fee agreement with his clients? Did anything prevent him from hiring his own experts and having them test the cows and the samples Mr. Tennant had collected? The author describes the anger he felt at being tricked by DuPont. Was his response predictable? If so, was DuPont's apparently deceptive behavior ultimately self-defeating?
7. Do you imagine all corporations behave the way the author is suggesting DuPont behaved? Or is this behavior unusual?

The Secret Ingredient

1. The author says that he did not have much of a team working with him on this case. Do you think this was because of the financial realities of the litigation or was it the author's choice?
2. Does the author's description of the pre-trial discovery process excite or depress you? Do you imagine all civil litigation is the way the author describes it?
3. The author describes his path to law school. How similar or different was your path? The author also describes how he came to be working for the firm where he is at the time of the lawsuit. Where would you like to end up working? Does the author's description of his law firm life appeal to you or does it make you think you'd like to work somewhere else? The author is talking about law firm life as it was for him about twenty years ago. Do you expect that things are different now? If so, how? Or do you think things are much the same?
4. The author describes finding a letter describing a chemical he hasn't heard of, that does something he doesn't understand. And yet instinctively he flags this letter as an important find. Do you see why lawyers have to have an instinct for important finds, even if they don't understand what it is they've found?
5. The author describes 3M's decision to stop making perfluorooctane sulfonate as voluntary, then notes that if 3M hadn't voluntarily withdrawn it, "the [EPA] would have taken steps to force it to do so." Later the author writes that "3M had been compelled to stop making" the chemical. Is this correct? Is the author engaged in a stealthy piece of advocacy? Is an agency's contemplation of future steps to compel the withdrawal of a chemical from the market the same as compelling the manufacturer to withdraw the chemical?

Paper Trail

1. The author describes his process of working through documents piled up on his floor. This was in 2001, when digital document management was in its infancy, but it was still possible to scan and search documents then. Would the author have been better served by adapting a technological approach to document review? Would a lawyer use his document searching and organization practices today?

The Scientist

1. How familiar are you with the process of getting a civil case ready for trial? The author has described the process of requesting documents and the tactics both sides asked to produce documents sometimes will engage in, and he has described the process of asking written questions, also known as interrogatories. He is now going to describe depositions, the process of asking oral questions with the answers given under oath. Have you attended a deposition? Have you ever participated in one? Does the author's description of this deposition demonstrate how important they can be to the litigation process?
2. The author describes "the potential liability facing 3M and DuPont" based on the exposure of the entire U.S. population to the chemical's he's been describing. The lawsuit in which the author is engaged still only has DuPont as the defendant as the plaintiff and Mr. Tennant as the plaintiff. Do you predict this will change? Should it? What form do you predict any new litigation might take?

The Letter

1. The author describes a mediation brief and the process by which cases often settle. Are you surprised to read this? Did you imagine all cases would go to trial, especially in apparently high-stakes cases like this one?
2. Did you predict that the author would bring a citizen suit against DuPont? If so, congratulations! Based on what the author says about this type of litigation, do you use why it is appealing in a case like this? The author also mentions the possibility of a class action. Is this the type of litigation you predicted? Are you surprised that the author is still not mentioning the possibility of litigation against 3M? Why do you think this is?

The Meeting

1. The author describes DuPont's lawyer using the phrase "poison the well" at a hearing. Are you surprised that a lawyer would use such a phrase in the context of litigation like this? Do you see why lawyers must be very careful in their choice of words? How should the author have responded to a lawyer saying something like this?
2. The author remarks on how nasty things are going to get. What do you predict will happen next? Do you think this litigation is going to get nastier than it already is?

The Cows Come Home

1. The author describes the effect one of his questions at deposition has on one of the attorneys for DuPont. Did you expect that in addition to listening carefully to the answers of the witness, a lawyer taking a deposition would have to be sensitive to the way lawyers react to questions? Did you expect that your body language as a lawyer would be under so much scrutiny? That it could be so revealing?
2. Are you surprised to hear of the allegations made in the Wall Street Journal article to which the author refers? If true, what should happen to the lawyers who agreed to such an arrangement? The lawyers who proposed it? Does this affect the way you think about what and where you would like to practice law?
3. Given what you have read about the case, what would you counsel the Tennant family to do about a settlement? Before reading further, what settlement terms do you think would be fair? What do you expect DuPont to offer? Would you counsel the family to accept a settlement that didn't involve an acceptance of responsibility by DuPont?

The Settlement

1. Have you ever been involved in a legal settlement? Do you see why the author writes that “[t]he decision is not as simple as it might seem?” Although the author is correct that he cannot reveal the details of this particular settlement negotiation, he lays out the way settlements work, and the emotions that settlement offers can generate. Are you surprised by what he writes? Did you imagine that settlements would be more emotionless processes than the one the author describes?
2. The author notes that a toxic exposure case, like the one described in the book, “may often boil down to a basic negligence claim.” The author then gives the four elements of a negligence claim, elements with which you will soon become very familiar in your Torts class. Based on what you know about this case, can the Tennant family prove (not just claim, but prove in court) these elements?
3. The author sets out the basic details of the Daubert standard for admitting expert testimony in federal court (and many state courts as well). Do you think this is a fair standard? Recall that this decision is made relatively close to trial, when most of the money to retain and prepare the experts has been spent.

4. The author writes that clients often come to litigation with “expectations shaped by Hollywood movies.” Have your expectations about litigation been shaped by Hollywood movies also? Which ones? Having read this account, have your expectations shifted a little?
5. Are you surprised that the family agreed to the settlement? Without knowing the dollar amount of the settlement on offer and the proposed litigation costs, it’s difficult to evaluate the family’s decision, but what do you think you would have done?

The Town

1. The author writes of Mr. Tennant’s desire to rectify the situation for the town, even though he would have no standing to bring such a claim. The concept of “standing” is complex, and you’ll study it at length in your Civil Procedure class. For now, though, think of it as having to be harmed by someone’s actions in order to seek restitution for them. That’s a very simplistic, and not altogether correct, view of standing, but for now do you agree with Mr. Tennant’s view that it’s “legal hairsplittin’?”
2. The author is now considering whether to file a class action. Have you ever been a member of a class? Do you know anything about class actions? The author writes about the complexity of that type of case, and also the decisions that go into deciding whether a firm should bring a class action. Did you think these were the considerations a firm would have to face?

First Blood

1. The author writes again of the toll his work is taking on his family life and he writes about coming home, playing with his children, and then going back to work. Is this a schedule you’d be willing to keep? Could the author have worked from a home office during the evening?
2. The author writes of filing a motion for sanctions. Experienced lawyers who have been reading this book have likely been asking why the author had not done this sooner. Without knowing anything about motions for sanctions, do you think they are justified in this case? Remember as you answer that the judge deciding on the motion will know nothing of the proceedings in the previous lawsuit and will be deciding solely on the proceedings in this new lawsuit.

3. The author writes of a new attorney and his behavior in court. You are doubtless familiar with the way courtroom lawyers are portrayed on television and in the movies. Are you surprised, then to learn of this lawyer's demeanor? The author, although appearing in this case, works at a firm very similar to that of the new lawyer. How do you think the author is dressed in court? How does he behave?

Privileged

1. The author writes of the DuPont representative at a community meeting taking a few steps towards the audience, a move the author finds "a little patronizing." How do you think the townspeople found this move? The author says he thought the representative was "trying to communicate openness." Have you thought how your physical movement can convey openness, being patronizing, or send other non-verbal messages?
2. The author notes that discovery includes requests for emails and other electronic documents, and writes that people in 2002 didn't realize that such documents were stored on servers and were not deleted when they were "deleted" on a computer or BlackBerry. Do you think most people today are more sophisticated in their understanding of the permanence of electronic communications?
3. The author writes of privilege logs, the bane of a young corporate attorney's existence. The author describes the purpose of these logs and correctly notes how long they tend to be. Preparing these logs is a task usually undertaken by the most junior lawyers at a large firm. Does that type of work sound enjoyable to you? Does reviewing such logs on the other side of litigation sound more enjoyable? The author suggests that these logs are not often read by the side to whom they are produced? Do you imagine that this is correct?

Alternative Data

1. The title of this chapter might call to mind the infamous quote about "alternative facts" offered by a White House spokesperson some years ago. In fact, the author is writing about the ways data can be interpreted. Do you have a background that makes what the author is writing here seem obvious? Is the writer over or under-simplifying the way in which data can be manipulated? If you are not a scientist, are you surprised by the ways data can be manipulated?

Appetite for Destruction

1. The author describes a deposition where a witness admits to destroying notes. As the author observes, this is common practice at law firms for some - but by no means all - documents, and lawyers must be very careful about what they do with documents generated during the course of litigation. For a witness like the one in this deposition, though, it is surprising to read of notes like this being destroyed. What should the sanction for this kind of behavior be?
2. Did you suppose that a party to litigation would be free to destroy documents at will? Or did you think that documents that might be relevant to litigation should be preserved? What if a party has a written policy about destroying documents in the regular course of business? Should this shield the party from the potential consequences of destroying documents?
3. The author describes the implications of DuPont revealing its document retention and destruction policy. Do you see why this was a problematic decision for DuPont? Had you considered that an email header could provide such important information?

Of Mouse and Man

1. The author writes of handling research and discovery in this case almost entirely by himself. Why do you think this was? Was it the author's choice to do this?
2. This chapter describes the process of animal testing. This practice was commonplace in the 1950s and '60s, but is much more controversial today. How do you respond to the idea of animal testing? Should it be allowed, or should it be banned? What are the implications of your answer?

Teflon Pawns

1. In this chapter, the author gives extensive information about the mothers of two children of DuPont workers who had eye defects. Why does the author spend an entire chapter to give you this information? Why does he end this chapter with the names of two babies - Bucky and Chip - who suffered from eye defects?

Actual Malice

1. Had you considered the difference between actual and punitive damages before? Do you agree with the author that there is little companies fear more than to facing punitive damages? Do you suspect that companies face the prospect of punitive damages in most of the cases brought against them? How effective do you think punitive damages are in controlling a company's future behavior?

Hail Mary

1. The author describes a situation where, because of a mistake, privileged documents - or documents over which DuPont asserted privilege - had been produced. Put yourself in the author's position: what would you do with those documents? Before you read further, consider what you think the judge should do. What do you think happened to the lawyer who inadvertently produced those documents?
2. The author describes the summary judgment process, something else you will likely study in your Civil Procedure class. The author suggests that these motions are rarely granted, especially in complex cases. Yet they are frequently filed by lawyers, even in complex cases. Why do you think that might be? Are the lawyers filing these motions in hopes that they will win, or might there be other reasons to file summary judgment motions?
3. The author writes that he had no doubts that DuPont's lawyers were "surprised and outraged" by his summary judgment motion. Do you think that is true? Or do you think the author is projecting his emotions on the other side's lawyers? Does it help a lawyer to imagine that the opposing lawyers are experiencing emotional reactions to a legal maneuver?
4. The author writes of "injunctive relief." Yet again, this is something you will study in Civil Procedure, but do you understand enough about it - from what the author writes and from your own general understanding - to see why this is so significant? If injunctive relief is so important, what had the author not sought it before?
5. By the end of this chapter, you have learned at least two reasons why filing summary judgment motions can be helpful even if you don't expect the judge to rule in your favor. Are there other reasons why lawyers might file these motions? Had you expected that lawyers might file a motion they don't expect to win? Does this raise any ethical issues?

Narrative Warfare

1. The author writes of placing many of the documents he had discovered into the public record by attaching them to letters and filings to governmental agencies. These documents were then seen and used by a non-governmental organization interested in the environment. Are you surprised to learn that a lawyer is using non-litigation pressure to accomplish goals that he is also using litigation to secure?
2. The author has mentioned in a previous chapter that plants in the Netherlands and Japan are doing the same work as the plant in West Virginia. Should the author be seeking relief in courts in those countries as well? Should he be writing to the environmental protection agencies in those countries?
3. The author writes that DuPont sought to disqualify the judge because he was a member of the class. Are you surprised it took DuPont so long to make this move? Without reading further, how should the judge rule on this motion? Having read further, what do you think of the judge's decision and do you see why making this motion might not, in the end, have been a good idea?

Epidemiology

1. As you read this short chapter, consider how much money is being spent on this litigation, both by the plaintiff and the defendant. Do you think the defendant should have calculated the potential cost of this litigation, together with the adverse publicity it is generating, and have offered to create a medical monitoring program of its own? If it had done so, with no admission of liability, would that have resolved the litigation? Would it have countered some of the bad publicity it has been getting? Why do you think DuPont did not do that?

“No Known Human Effects”

1. Does reading this book make you wonder what Teflon-coated products you have in your house or apartment, or use every day?
2. The author writes that the trial judge's injunction was “thrown out on a technicality.” In the law, are there any technicalities? Is the law entirely made up of technicalities?

Corporate Knowledge

1. The author writes that it was during the deposition of DuPont's CEO that he first realized that one can't see evidence if one isn't looking for it. Are you surprised that it took the author this long to realize this? Do you accept that he had this realization during the deposition itself, or is that dramatic license on the part of the author?
2. The author writes that he "took a short breath" before he turned the key of his car, perhaps believing that someone had put a bomb under his car. Do you agree with the author that perhaps he had been reading too many thrillers? Clearly, nothing happened to the author because he wrote this book. Why, then, did he include his misgivings in this chapter?

The Perfect Storm

1. The author writes of the EPA's suit and the results of the adverse publicity DuPont was getting. Again, should DuPont have anticipated these problems and sought to resolve this litigation earlier, heading off some of these problems?
2. The email described by the author as one of the documents inadvertently produced in discovery suggests that DuPont's lawyers were suggesting early on that DuPont should be considering a resolution that met many of the goals of the litigation. Even though DuPont did not engage in these internal discussions, do you see the important role lawyers can play in providing alternative methods of resolving litigation?
3. The author writes that the disclosure of John Bowman's email made him susceptible to deposition. Any attorney reading this chapter would have a horrified response to the possibility of being deposed in a case in which they were representing a client. Do you see why this is such a terrifying prospect for lawyers? Does DuPont's response suggest how much they did not want their lawyers deposed?

The Big Idea

1. The author describes the process of a mediation in complex litigation, something we rarely have a chance to learn about. Have you ever been involved in a mediation? Have you ever considered how mediation might work? Does mediation seem like a good alternative to litigation? If so, would you like to learn more about mediation while in law school? Is mediation a potential career in which you might be interested?

2. The author here presents what he perceives to be DuPont's strategy in the case, arguing, in essence, that the science did not support the plaintiff's claims. This book is written by the plaintiffs' attorney, and is understandably - and properly - written from his perspective and from that of the plaintiffs'. Taking a step back from that position, though, view the positions of the two parties dispassionately. Is there some justification for DuPont's position? Before reading this book, if someone had described a case in which the plaintiffs were seeking a great deal of money for a position in support of which they had little or no scientific support, how would you have reacted? Do you see why litigation is rarely as clear and unambiguous as lawyers would have you believe?
3. Reading the proposed terms of the settlement, ask yourself what in them DuPont could not have agreed to years earlier, and what the cost of this settlement is compared to the cost of lost business and bad publicity that DuPont suffered over the duration of the class litigation.
4. What do you think of the "Big Idea?" Does it seem like a sensible use of the \$70 million allocated for "class benefit?" Looking at how much of the book remains, do you imagine that everything goes smoothly from here?

The Study

1. The author makes two brief mentions of the market and its reaction to the news of the potential carcinogenicity of PFOA. Had you considered that the market's response to litigation might be significant? How important a role do you think the market has in corporate litigation?

The Second Wave

1. The author points out that it's important to understand from where advocacy groups get their findings. Had you considered that interest groups from all sides of an issue might fund organizations with neutral-sounding titles to argue issues on behalf of their positions? What do you think of this practice? Will you think twice about this when you read of the conclusions or positions of organizations with seemingly neutral-sounding names?

Dark Science

1. The author mentions a consulting firm that specializes in corporate product defense. Did you know that such groups existed? Are you surprised to learn that they do? We are now ranging very far from the ground you will cover in your first-year torts class or, indeed, in any class you will take in law school. This is the world of complex civil litigation in practice. Does what you are learning in this book make you more or less interested in this form of litigation?

Burden of Proof

1. The author describes his conducting his own research on the scientific reports related to his case. Are you surprised to learn of a partner at a law firm doing this kind of work himself? Did you expect that he would have a paralegal or associate doing this kind of research for him?
2. The author writes of the perceived differences between state and federal courts. Had you considered that there might be differences in the way state and federal courts might respond to the same legal issues? Why do you think these differences might exist? Have you given much thought to the fact that there are two different court systems in this country? (In fact, there are many more than two systems, but this isn't the time or place for that discussion). Why do you think we have both state and federal courts?

Shaken

1. The author writes that he had set up the Science Panel, but that DuPont was "using it against us," arguing that any regulatory action was premature until the Panel completed its work. Is DuPont's position unreasonable? Is DuPont's argument, in fact, using the existence of the Panel "against" the plaintiffs or is it arguing that the Panel's work might provide a more scientific basis on which to proceed with any regulation? What regulatory action should have been undertaken prior to the Panel's final report? Why?
2. The author writes that DuPont and 3M had "great incentives - and resources - to defend their reputations." Is the author arguing that the defendants should not have defended themselves in this litigation? What alternative did the defendants have but to defend themselves? Why, then, does the author imply that they were acting wrongly in conducting a vigorous defense?

Road to a Reckoning

1. The author describes the results of the Science Panel. Although the Panel discovers a link between PFOA and human health effects, it found no link between PFOA and birth defects. The author knew of the Panel's findings before he wrote the chapter in this book where he described, at length, the birth defects affecting Bucky and Chip. Why did he write that chapter and leave it in the book? How do you think he feels about the results of the Panel on this issue? If you believe the author is not accepting the results of the Panel on this issue, does that surprise you? How do you respond to the Panel's findings? Do those findings reaffirm or shake your confidence in the plaintiffs' positions in this litigation?
2. Are you surprised to read that a case that has settled is still embroiled in disagreement and contention? Is the problem the author describes one caused by DuPont's desire to not pay out the full amount of the monitoring agreement or the author's failure to tie down how the monitoring process would work at the time the settlement was reached? Both?
3. Are you surprised to learn that other law firms are looking to sue if they can find clients that allow them to participate in the litigation? Did you imagine that once one law firm was involved in class litigation other firms would stay away?
4. The author describes a hearing where the precise wording of the settlement agreement is in dispute. The author wins the issue, but do you see how important the specific words that the parties use is important? A great deal of time and attention, by high-priced lawyers and a federal judge, was spent on the meaning of the word "among." Does this surprise you? Do you pay such close attention to the words you use when you express yourself? Will that change now that you are in law school?

The Trial

1. This is a description of the first "bellwether" trial, used by the MDL court to resolve common issues among all the MDL-consolidated cases. While the civil procedure issues might be unfamiliar to you, the actual trial will proceed exactly as would an individual trial between two litigants, albeit a trial with much more scientific testimony than would be normal. What do you think the difficulties are for lawyers presenting a case with this much science in it?

2. Again, you see some discussion of share price and some corporate maneuvering and the role it might play in litigation. This is nothing you will learn about in law school, but do you see why it can be important for lawyers to understand the market implications of cases on which they work?
3. As complex as the evidence in this case is, it boils down to the standard tort principles that govern all negligence cases. You will study those principles in detail during your Torts course in just a few months. Will you remember what you read here about those principles when you are studying them in the fall? Did you already know these fundamentals of a negligence case? Do they make sense to you or do you feel they're overly complex? Remember that negligence is not the only theory of tort recovery, and you will likely study some of those additional theories as well. Don't assume that every torts case involves the same principles as a negligence case!
4. Based on what you've read about this trial in this chapter - and only this chapter - what do you think the jury will do? You have two decisions to make: is DuPont liable or not liable; and if liable, what amount do you award? Having now read what the jury did, do you agree with the verdict?

The Reckoning

1. Would you have awarded punitive damages in the Bartlett case? Based on the facts of the Freeman case, would you award them here (assuming you find liability)? If so, why do you think the plaintiffs' lawyers led off with the Bartlett case and didn't start with the Freeman case?
2. After three and a half trials, DuPont finally agrees to settle the remaining lawsuits for \$670.7 million. Do you think DuPont could have settled all litigation against it sooner for less, especially when you add in litigation costs? Do you think the total cost of this litigation, including all settlements, verdicts, and costs, will cause DuPont to change its behavior in the future?
3. Are you surprised to learn that you might be - in fact, almost certainly are - a class member in the litigation the author filed in 2018? Do you think you are a member of other class actions? What are your responsibilities as a class member? What opportunities does being a class member give to you?

Professor Johnson's Comments

Each Professor who chose a book for this series had a chance to comment on, add, or change the questions I wrote. In most cases it was possible to make those changes without alerting you to their existence. But Professor Johnson made some important points that you should consider, and she should be acknowledged for making them. Here they are, with some minor additions.

The author, Bob Bilott, repeatedly refers to his feelings of belonging, or more to the point, not belonging. He talks about outsider status and insecurity on a few occasions. What does he mean by this? What accounts for these feelings? What if race, gender, or other backgrounds were considered; how might feelings of belonging or not belonging arise? In fact, we know nothing about any issues of diversity throughout the book - plaintiffs, lawyers, defendants, scientists, judges, etc. Are these issues not relevant at all? Why do you think we don't learn anything about these issues in this book?

Related Public Health Water Crises - Flint, Michigan

Flint, Michigan is a majority Black city, where 40% of the people live in poverty. In April 2014, the City of Flint decided to draw water from the Flint River, instead of drawing water from Detroit, in an effort to save money in providing water to its 100,000 residents. Officials said the move was supposed to be temporary, until the city connected to a planned new regional water system. The change to the Flint River introduced lead-poisoned water to residents' households, as officials failed to provide protective coatings to the lead pipes throughout the system. This generated a massive public health crisis. City and State officials denied that there was a problem with the water. However, immediately after the switch to the Flint River, residents complained about the smell, taste, and brown appearance of the water. They complained of health concerns, including rashes, hair loss, and other problems. Health officials reported an increase in Legionnaire's disease, sometimes fatal, during the years after the water source was switched. Residents' concerns were dismissed, or they were told they were overblown.

Residents resorted to bottled water for all of their water-related needs, including drinking, bathing, and cooking. In January 2015, Detroit offered to reconnect Flint to its water system, but the officials in Flint continued to insist the water was safe. However, city officials warned residents that the water contained byproducts of disinfectants that could cause health problems, including an increased risk of cancer over time. By September 2015, a group of doctors urged Flint to stop using the Flint River for water after finding E. coli and total coliform

bacteria, as well as high levels of lead and other toxins in the blood of children. High lead levels pose particular dangers to children and pregnant women, and can cause learning disabilities, behavioral problems, and mental impairment. State regulators continued to maintain the water was safe.

In 2016, a Congressional review faulted state officials and the Federal Environmental Protection Agency for the Flint water crisis. Michigan Attorney General Bill Shuette initiated an independent review. As a result, the state charged former emergency managers Darnell Earley and Gerald Ambrose with multiple felonies for their failure to protect the residents of Flint from health hazards caused by contaminated water. Health and Human Services Director Nick Lyon was accused of failing to alert the public about an outbreak of Legionnaire's disease in the Flint area. He and four others were charged with involuntary manslaughter. The state's chief medical officer, Dr. Eden Wells, was charged with obstruction of justice and lying to an investigator. The Michigan Civil Rights Commission issued a report that found "systemic racism" going back decades as causing the water crisis in Flint. The health effects from the crisis linger.

Questions:

Do you perceive any similarities (or contrasts) between the crises in West Virginia and those in Flint, Michigan?

Race is never expressly mentioned in Exposure regarding the people or communities affected by the DuPont contamination. Why do you think it is not mentioned? What assumptions are made by not mentioning race? Why is race mentioned in the context of the Flint, Michigan circumstances?

In the Flint water crisis, regulatory, civil and criminal charges were filed against officials. Do you think that criminal charges should have been considered against DuPont and 3M for the harms they caused?