UNITED STATES
COURT OF FEDERAL CLAIMS

COLTEN SNYDER BY AND THROUGH KATHERINE SNYDER AND JOSEPH SNYDER, HIS NATURAL GUARDIANS AND NEXT FRIENDS,	)	
Petitioners,	)	
v.	)	Docket No.: 01-162V
SECRETARY OF HEALTH AND HUMAN SERVICES,	)	
Respondent.	)	

Pages: 1015 through 1049

Place: Orlando, Florida

Date: November 9, 2007

UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

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Respondent.	)	

Courtroom 56
U.S. District Court
401 West Central Boulevard
Orlando, Florida

Friday,
November 9, 2007

The parties in the above-entitled matter convened, pursuant to notice of the Court, at 8:55 a.m.

BEFORE: HONORABLE DENISE K. VOWELL
Special Master

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P R O C E E D I N G S

(8:55 a.m.)

THE COURT: Let's go back on the record in the case of Colten Snyder. Before we begin with closing arguments, let's just deal with a couple of housekeeping matters.

At the conclusion of yesterday's proceedings, counsel for both sides and I talked a bit about the issue of trying to obtain access to the U.K. litigation. I expressed my practical concern about issuing a subpoena to a foreign court who's already ordered things sealed. As Mr. Wickersham put it, that he did not want to precipitate a Boston Tea Party incident. I am in complete agreement with that. So I think the way the parties plan to proceed is to work together and get us a report at the next Autism Omnibus status conference, which is the 20th of November.

And at that point, I would hope that we would have a fairly complete list of what it is that we want from the British files, consent obtained from those individuals who have filed reports to the extent that they were going to give it, and a pretty good handle on what other documents besides expert reports if there are any that we want to obtain as well as a

clear and cogent statement of what we need, why we would like to have this material to assist in this litigation.

And I understand there are several other hoops that need to be jumped through, but the government is going to work with Petitioners in ensuring that they understand how the procedure went last time so that they can duplicate it if possible. Is that a fair summary of what we talked about?

MR. POWERS: Yes, it is, Special Master.

MR. MATANOSKI: Yes, ma'am.

THE COURT: Okay. And then this morning we talked briefly about what happens after closing argument today, and that is the briefing schedule and much as you all were tempted to just make oral arguments and then dispense with the brief, we all have shared a similar desire, gee, could I just rule from the bench and then not have to write this opinion? But I don't think that's going to work for any of us.

So, for that reason, we've come up with some dates. The 23rd of January is a due date for Petitioner's posthearing brief, and the 10th of March is a due date for the Respondent's posthearing response brief. And that seems to fit with the

schedules of parties for both sides as well as what's happening in the phase two Omnibus proceeding, correct? No problems with those dates?

MR. POWERS: That's correct.

MR. MATANOSKI: Yes, ma'am.

THE COURT: All right. Are there any other matters we need to put on the record then before we go into closing arguments?

MR. WICKERSHAM: Hopefully that you did graciously come down and meet my client, our client I should say respectively, Colten Snyder. Just on the record, I'd like it noted that Colten is with us this morning together with his brother and sister.

THE COURT: Welcome, Colten, and I understand you may get civics credit for this. That's a good thing. It's nice to have an opportunity to see the court system in action, particularly without having to watch a friend or someone else being arraigned. This is the good part of the court system where we help people try to resolve difficulties rather than deal with criminal misconduct.

All right. And also I met Colten's brother and sister, who are also present in the courtroom.

With that, let's go ahead move into closing arguments. And Mr. Powers, I understand that you're

going to make the closing argument?

MR. POWERS: Yes, thank you. Thank you, Special Master. And since obviously we don't have the opportunity to forego written submissions and obviously the recitation of the facts and the review of the evidence in those written submissions is going to be very detailed and lengthy, I will truncate the closing and not even attempt a thoroughgoing summary of the evidence and the testimony and the science that we've heard but rather sum up the case and sum up the case and I hope put it into context in terms of the autism proceeding, because this case, as we all know, has been repeated throughout this hearing, is about Colten Snyder and resolving his claim, but it's also an important case that will give guidance to the parties and particularly to the Special Masters to resolve 4800 claims or some portion of those 4,800 claims in the Omnibus Autism proceedings.

At the outset, in my opening, we talked about biological plausibility. And biological plausibility, particularly given the standards of proof, the burdens the proof in the program, is an important concept. And we promised you in the opening that we would show that the theory we've proffered here is biologically plausible, and we've met that

burden. We've lived up to that promise.

Biological plausibility here revolves around several issues. One is in describing viruses generally. Viruses from the testimony that we've heard often do have new and novel and unexpected effects. They often have effects and consequences that cannot be predicted simply based on their structure. You can't always base what you know about a virus and what it might do in the future with what you have observed it doing in the past.

And I emphasize observed what happened in the past, because as we know, things might have happened and have happened in the world in general and in the world of viruses in particular, happening over and over again, happening many, many times. Nobody knew that it happened. At each of those events, you could say there's no better study describing this phenomenon, there's no evidence describing this phenomenon until you finally look for it and you find it.

So the fact that throughout Respondent's expert reports and testimony you've heard that, well, there just isn't evidence to support this particular theory or some argument to that theory, in many cases, it's because people either haven't looked for it or

they haven't found it yet. But the plausibility as I'll detail a little bit more is there.

In a classic example, you heard Professor Kennedy, Dr. Kennedy talking about how the HPV can cause multiple effects completely not predicted by the structure of that particular virus, and that's what we saw going on here. You then narrow it down to measles virus.

We've heard testimony that makes it sound as if so much of measles virus is predictable. And in the majority of cases, it probably is. We talked about exposure time, the viremia, what happens when it's in the body, its cycle of life in the host, the symptoms one would expect. And it makes it sound as if it's all known and predictable and coded and inevitable and that's the limited universe of what can happen with measles virus exposure.

But you look a little bit more and you actually see that there are a number of exceptions to that. You have from the HIV studies, the case control studies, you find out that actually measles virus can persist in a body for 69 days and perhaps even more. And as the technology gets more sophisticated, you start finding it there longer and longer. So it doesn't clear quite as quickly as we thought.

You see it causing diseases like SSPE and MIB. Again, very, very different than the normal course of a rash and the other things that one would expect with a typical street virus, a wild virus infection.

We've seen reports from the CDC talking about encephalopathy and other neurological injuries associated with administering the MMR. And sure, they're rare and they're unexpected but they happen. We've even heard that the measles virus can sometimes have a curative effect from Respondent's own experts, curative effects that again one would not predict based on what you knew about the structure and the life cycle of that virus.

So it's not a neat, orderly progression in all cases. There are new and novel outcomes. And from my reading of the science and the experts that we had on the stand describing their reading of the science, those type of new, novel and unexpected outcomes are being pursued and are being discovered in the role of measles virus and in virology in general.

And some of it shouldn't be that surprising. We've heard the process by which wild viruses converted to a vaccine strain, the attenuation process. We've heard that by Respondent's expert

referred to as a black box, that after 45 years of intensive study, when you see the articles that are generated, you have literally an industry that has been making this biological product, the vaccine strain, for 45 years, and some of the core processes remain a mystery.

And given that black box of what happens as you attenuate and mutate a virus to form a new, less virulent virus, that black box also shuts off what we can see about a process that may very well contribute to exposure causing the type of symptoms we see in this case.

There is nothing about the properties, there's nothing innate to the measles virus that precludes it being able to cause the type of injuries we see here. And there's nothing innate about that virus. That means SSPE, MIBE are the only possible sequelae. There are other outcomes and this is one of them, and that's what the evidence has shown.

We talked also about persistence and replication, because bottom line, everybody in the room knows that the central theory in this case is that vaccine strain measles virus actually in fact persisted and replicated in Colten's cerebrospinal fluid and ultimately in his brain.

We put on evidence and heard a huge amount of debate about evidence identifying measles virus RNA detected in Colten in his cerebrospinal fluid, and that again is proxy for in his brain.

The virus was there much, much later than one would anticipate, much, much later. And it's not lying there inert. We know that it was replicating. We know it was replicating because the proteins were identified. The F-gene, as Professor Kennedy described, was identified, and that's a gene far enough along in the sequence to tell you that whatever viral material in there was not an artifact or debris from a previous exposure. It had to have been replicating, and it was replicating in Colten's spinal fluid and in his brain.

Dr. Griffin's work that was discussed in Cedillo and cited a couple of times here indicates clearly that the persistence issue and the replication issue can be established through the presence of RNA and particularly RNA accompanied by proteins.

So, with measles virus in Colten's brain, it's more likely that it was doing something in his brain than it is likely it was doing nothing. And what it was doing is described by Dr. Kinsbourne. What Dr. Kinsbourne described to you was a model. It

was a model of neuroinflammation with concrete neurological symptomatic outcomes.

In the brain, as Dr. Kinsbourne describes, the presence of the measles virus triggers the body's system, immune system primarily in the brain, activating microglia, releasing proinflammatory cytokines, setting off a chain reaction that ultimately results in a fundamental disequilibrium in the brain's ability to function, the overexcitation of the brain, creating neural noise, so to speak. I don't think you that term from the stand, but in Dr. Kinsbourne's report, he describes the neural noise that's caused by this excitatory inhibitory disregulation and the overexcitation.

He then is able to describe how that neural noise creates the need for a child who is experiencing that to behave in ways to adapt to the reality inside his brain, and that's what happened with Colten. So Dr. Kinsbourne's model is not only biological plausibility in its neurology, in its neuropathology, but it's plausible at both ends. That is, it both is consistent with and explains a measles exposure at the front end, and it is explanatory and consistent with the symptoms one sees at the other end.

What we see here is also a time sequence

cause and effect, and this is where particularly the testimony of Colten's family and caregivers, medical caregiver and speech therapist, is crucial. That evidence establishes that Colten was a neurotypical little boy up until 15 and a half months of age, meeting his developmental milestones, rolling over, sitting up, standing up, walking, interacting with his parents, interacting with his family, playing with his siblings. Motor skills, social skills, interpersonal skills and communication skills entirely consistent with a typical course of neurological development, and he maintained that course from birth almost to 16 months.

And as hard as Respondent's experts might want to go back in time and scrutinize seconds-long snippets of video to identify potential expressive language deficits, this is a child who was getting well-baby visits really his entire infant life. And the record is consistent from the medical providers not identifying any, any problems like that at all.

You remember there was one note at four months, he wasn't rolling over. That was it. By the time he goes back, he's right on track, and by the time he has his one year, he's right on track, with a specific note that he shows no receptive language

delays or disorders.

So this was a neurotypical child up until he got the MMR and he was not a neurotypical child after that. That is, the medical records and the testimony here, contemporaneous records, make it clear that this was a different boy after 15 and a half months. And again, given the Petitioner's burden and what we need to prove in establishing causation, that sequence, the time sequence, is important. And in this case, it's not just important, it's dramatic. And you've heard the testimony on that.

There is obviously moving on to another issue a huge debate here about the reliability and credibility of some important evidence in this case. And the core evidence in this case is the evidence of measles virus persisting and replicating in Colten for a significant period of time after his MMR.

Petitioners are relying on the lab results from Unigenetics. We've seen a sustained attack as we did in Cedillo on the reliability of the Unigenetics results. A couple of comments on that without even getting into the issue of what you, Special Master, talked about early on, the possibility of getting more information from the United Kingdom.

But just based on what we have here, a lot

of this attack is tameless. It's a house of cards with hearsay built upon hearsay built upon hearsay. Somebody sees a document, tells somebody else they saw a document. That person then reaches some conclusions, tells somebody else about it and then somehow it ends up here. A chain of hearsay embedded within hearsay.

And hearsay not even necessarily in a technical legal sense. And we're not here obviously to debate the rules of hearsay because they don't apply in the program. But it's important to remember that the rules about hearsay exist because they are an indicia of reliability. And when folks who supposedly have developed an extensive documentation or critique of a particular idea aren't willing to come in and present that and it's being done in proxy so to speak, it makes that attack on the O'Leary lab less reliable and less credible.

I think it's also important to remember the testimony of Dr. Kennedy and Dr. Kinsbourne to take into account their credibility and their reliability. And I think one of the core things that if I can imagine myself as the disinterested observer, seeing those two gentlemen testify, aside from their qualifications, aside from their experience, aside

from the fact that they're both smart guys, the striking thing about their credibility is that they are happy to tell you, Special Master, what they don't know as well as what they know.

They are willing to admit of uncertainty. They are willing to admit when they run up against a thought process when their certainty dips down below 90 or even below 50. They don't overreach and they confine their conclusions to what they believe to be supported by the evidence, and that makes them credible.

That really is a summary of the evidence in this particular case. It's briefed ahead of hearing. You'll be briefed after hearing extensive evidence. But that in a nutshell is the evidence that you've seen here for the last four days. The evidence about Colten Snyder is evidence that you'll use to resolve his individual claim, but the evidence that you've heard here is going to reflect on how a lot of these claims are resolved with the Cedillo case, the Hazlehurst case and now Colten Snyder's case all having concluded hearings and now the process of briefing and opinions being written.

The Petitioners respect that process, and the Petitioners look forward as we move through

concluding decisions on these three cases to lining up the next round of cases. And one thing that I just want to always emphasize is that as lawyers, we talk about these as cases, they're claim numbers, they're a petition number. I think we have to be careful and remember what these cases are really about, and I think our witnesses have to be careful about what these cases are about.

These are not abstract cases. These are real kids with real injuries. And I respect that the Special Master has clearly recognized that, but on behalf of my clients, my clients that I personally represent and the folks that I represent collectively as a member of the PSC, I always want to make it clear that it is about children with real injuries.

And we're talking about science and we're talking about facts, talking about experts, talking about documents. You have to bring it all in and apply it to the child and to the facts of that child's medical histories. And when you do that in these cases and particularly when you do it in Colten Snyder's case, given that dramatic presentation of regression after administration of the MMR, that is powerful, compelling evidence of causation. And based on that evidence as well as all the other evidence in

the case, we urge you to find that Colten Snyder is entitled to compensation on his petition in this program.

THE COURT: Thank you, Mr. Powers.

Mr. Matanoski, are you arguing for Respondent?

MR. MATANOSKI: Yes, ma'am, although I think Ms. Esposito was a little concerned when she got the seat at the front table here.

THE COURT: Throwing her into the fray, yes.

MR. MATANOSKI: I noticed when I walked in today and pulled out a big sheaf of papers that there was a bit of a concern on everybody's face that my closing argument might be fairly lengthy, and I think I noticed a visible sigh of relief when you saw just a couple of sheets of paper here. I hope to be brief, but always, you never as a lawyer seem to be able to do that, especially when you get to this stage. I'd be remiss, however, if I didn't start at least by acknowledging the Snyders and their participation here, our appreciation for that and our care and concern for the family.

There's kind of a wall that's built between us for the government and the families. A bit it's by rule or ethics, we don't get a chance to express or

talk or interact with them, and this is really my only opportunity to state that we certainly appreciate and understand. We read the medical records, we listen to the testimony, we see the families, and we know what they go through on a daily basis and certainly understand that and feel compassion for them, and that's certainly true in this case.

I'd also like to thank the Court because I know that you've paid attention through these four days of testimony, now this fifth day of trial and four days before that in the Hazlehurst case and 12 days of Cedillo. I know it's been a long period time, a lot of evidence, and it's been clear that you've listened carefully to that, and we certainly appreciate your attention to both sides of the case.

There's been discussion about the burden of proof, and I seemed to detect at the beginning of this case maybe a little shift to a little bit more emphasis by the PSC on the burden of proof. I want to make sure there isn't confusion about the burden of proof and the quality of evidence that goes into the burden to meeting that burden.

The Respondent has been driving home I hope that the evidence that you have to look at on complex scientific issues needs to be measured as to its

reliability. That measurement of reliability isn't a 50 percent measure. That's a separate idea about whether something is reliable on a scientific basis. Only if it's reliable does it feed into the ultimate question about whether or not there's causation.

And the burden, the burden has always been 50 percent if you will, 50 percent and a little more. That was true in Daubert, that was true in the whole in the Daubert progeny of cases. The quality of the evidence that goes into that burden is a different matter.

The PSC has laid out a theory here that has multiple steps. Rather than going through obviously 20 days of evidence on those very steps, I'd rather pose a series of questions that I think come up when one looks at that theory and in separate parts. And I think you really have to answer that yes, the Petitioners have convinced you on each step before you can find that there's causation under the first theory that MMR and mercury causes autism.

The first question is, do you believe that mercury in the amounts contained in vaccines causes immunosuppression, any clinically relevant immunosuppression. Do you believe that based on the testimony that you've heard from Drs. Byers and

Aposhian against the testimony that you've heard by Drs. Brendt and McCabe. Do you believe that measles virus causes clinically significant immune suppression, or do you believe the testimony of the experts that Respondent put who work in the field of measles day in and day out and what their observations have been.

Do you believe that measles virus persists in the brain in a way never seen before as Dr. Kinsbourne hypothesizes? Do you believe that it persists in the brain but does not cause cell destruction? Do you believe that it persists in the brain and gives clinical symptoms entirely distinct from subsclerosing panencephalitis, that it manifests in symptoms that are unique, those symptoms that are unique to autism? I think Dr. Rust explained the differences fairly convincingly at least in my view during the Hazlehurst case.

Do you believe that it persists and causes inflammation in the brain when that's not seen in subsclerosing panencephalitis? Do you believe overall that the mechanism, the injury mechanism that Dr. Kinsbourne postulates is reliable when he himself in the Cedillo case described it as the weakest part in his whole chain of causation, a chain of causation

which many of the separate parts he described is hovering at about the 50 percent confidence interval for himself?

And specific to this case, do you believe that measles virus could persist in the brain, cause an immune reaction as Dr. Kinsbourne hypothesizes and yet not result in measles antibody when that was measured in Colten's CSF?

Mr. Powers has said, well, measles virus could act in a new and novel way, one never seen before. I believe that that really is almost coming word for word from Dr. Oldstone's writings. We heard that a lot in Cedillo. We've now heard from Dr. Oldstone and what he believes about this theory, this postulate.

Do you believe that it could act in this new and novel way as Petitioners said when three, and if you count Dr. Oldstone, four preeminent experts in the field of measles virus have come in and said, we research it, we want to see it in new and novel ways, we're looking for that, and it does not behave in this fashion? Dr. Ward, Dr. Griffin, Dr. Rima and now Dr. Oldstone if you choose to accept that say it does not behave this way.

If you were going to look for the measles

virus to behave in a new and novel way, would you look to those people who are studying it, or would you look to Dr. Kennedy, who's written one paper based on his review of those very experts we presented in terms of finding out whether measles virus could act in a new and novel way?

Do you believe the Unigenetics test results are reliable? And do you believe that when Unigenetics can get a positive result when no reverse transcription process is performed? And we know that that has to be done in order to find this type of RNA.

Do you believe that you can trust the Unigenetics results when you know that when confronted with a zero copy number for a sample and then that same sample getting a copy number that's say 2,400, they ignore the zero and take just the 24? Would you trust the lab results from a lab that operated in that fashion? Do you believe the Unigenetics results when they report cell counts that are physically impossible? You can't cram that much genetic material into a cell.

One thing that the focus has not been on it recently because it certainly is not going to be part of the Petitioners' case, and we've been in the last two cases responding more to the Petitioner's case,

and that's the epidemiologic evidence, and I think it's an appropriate time to go back to that and think about it a little more.

Do you believe that epidemiologic evidence that shows that MMR vaccine is not associated with autism can be wholly ignored? The IOM didn't believe that. They looked at it and concluded based on that evidence that there is no link.

I would be remiss in talking about it as much as there has been some dispute about the Unigenetics results. We don't think there really is any dispute about it, but we heard what does Dr. O'Leary think, and he's not here obviously. He's not been presented by Petitioners. And I think there was some discussion about hearsay, and I assume, I assume with respect to Unigenetics that that discussion about hearsay was about Dr. Oldstone's testing if you will of Unigenetics.

It certainly couldn't have been about Dr. Rima's or Dr. Bustin's testimony. They looked at the lab results. They had actual access to the lab. You know, they weren't telling you what someone else told them was going on there, they were looking at what was going on there. So it must have been about Dr. Oldstone and what he said and what communications may

have gone back and forth between O'Leary.

I think in all this, people may have ignored a piece of evidence that the Respondent has put in in the Cedillo case, and it's a newspaper article that quotes Dr. O'Leary in 2004 and what he had to say about his testing in the lab. And that was Respondent's Exhibit AAA, triple A.

He said, and I'm talking about the Unigenetics testing results, and I'm going to quote, take a quote from that article: "The testing continued until late 2003, and reports were provided to Alexander Harris and to the U.K. Court on our findings. They did not support the MMR autism hypothesis."

I think that convincingly tells us how reliable the Unigenetics test results are for the proposition that they've been put forward to for in this hearing and in these test cases generally, that is, whether they could possibly link MMR to autism. Dr. O'Leary himself said that they did not, the tests in the Unigenetics did not do that.

In wrapping up, I'd just like to say I apologize if in some point there seems to be some passion to our defense of the case. Our exuberance at times may lead us to perhaps an overstatement, that

they hopefully didn't offend, maybe at times it does. Certainly, I've tried to be dispassionate. I'll just give you a little anecdote. A couple of weeks after the first trial, I bumped into a friend and he said, I read about a case you're doing in the newspaper, and that had never happened before.

Toiling away for 16 years in vaccine work and even more working for the United States, I've never had anybody say to me, oh, I read about a case you did in the newspaper. And I've had to admit a little bit of vanity. I was interested to hear that.

And I said, oh, what did you read? He said, they described you as colorless. So I didn't want to be colorless, but I hope I haven't maybe stepped beyond the bounds at times and been a little too exuberant. But a vigorous defense is warranted here and a certain amount of passion in what we do. And I think we ought to be passionate about it, because what we do is important. Obviously what Mr. Powers and Mr. Wickersham do is important, but also what we do for the United States is important because the stakes are very high and important for both parties here. It certainly is true in every case.

And I know it's abundantly clear to the Court in every case that it's important to the

petitioners before you. I've done these cases for 16 years, and I felt that every single case was important to the petitioners and can recognize that and know that.

Here, however, I think the spotlight also shows how important it is in terms of decisionmaking and making the right decision, not being swayed necessarily by appeals to more personal emotions if you will and looking at it based on evidence alone, because this case, there is a spotlight on this case, and what you do obviously will be viewed by many people as indicating whether or not vaccines are safe. Now that's true in every case, but here the spotlight is on it. It's brought into our attention that what we're going to do is going to be looked at closely.

So I won't apologize for vigorously defending this case. It's an important case. I believe that we put on reliable evidence that shows the vaccine, it is a safe vaccine, it does not cause autism. And I have every confidence that the Court will apply that evidence and make the proper decision. Thank you.

THE COURT: Thank you, Mr. Matanoski.

Mr. Powers?

MR. POWERS: Yes?

THE COURT: Did you wish to make a very brief --

MR. POWERS: Extraordinarily brief.

THE COURT: Extraordinarily brief I'll buy. Okay.

MR. POWERS: Yes. And I do appreciate your indulgence to let me respond, as is often traditional in a civil setting, a brief rebuttal close.

And just addressing a couple of issues that Mr. Matanoski raised. Talking about the credibility attack so to speak on the Unigenetics lab, it's important to remember that when we hear that documents were reviewed someplace, it's important to remember that we don't see the documents here. And evidentiary rules about having the complete record, being able to put things in context and being able to track the history of events, particularly detailed events that matter at a laboratory, is significant. And we don't have that here for a number of reasons.

What is a problem with the Respondent's case is that so much of their testimony, including much of what we heard from Dr. Rima yesterday, is based on conjecture and assumptions based on very, very limited bits of information, assuming that if an error happened once that it's a pervasive error, that if a

mistake is made, it's a pervasive mistake, that if contamination happens once, it (a) isn't properly addressed and (b) happens repeatedly. Assuming, assuming, assuming without evidence that it happens.

And if you look at what's actually documented, particularly the Unigenetics issue, it's a much narrower universe of alleged errors than one might be led to believe if you extrapolate it out. So I just wanted to raise that one.

And also the point that in one of the Respondent expert reports, Unigenetics was described as "a purpose-built laboratory," with the implication that it was built on behalf of litigants, it was being operated by folks with a stake in the outcome. That's how I read the "purpose-built" description.

It's also important to remember that in the U.K., there was a massive purpose-built attack on that lab, paid for and organized by the pharmaceutical companies that were at risk of liability in that system. And that purpose-built defense has been imported and is being used here. And not that it's inappropriate to do that, but it's just important to remember that when one side is described as purpose-built, it often applies to the other. And those are just issues that you ought to consider in weighing the

credibility and the reliability of the evidence.

One last note, I just want to talk about the issue of epidemiology, because Mr. Matanoski is right. It's really focused at least in Cedillo fairly extensively on Dr. Fombonne's testimony. I was going to say I vigorously disagree, but it's not me. The scientific community vigorously disagrees with any statement saying that epidemiology can prove that there's not a cause and effect.

And the data, as you know, and the evidence that we heard way back in Cedillo has said it's about associations. And epidemiology can't conclusively prove the positive or the negative. So get that issue out.

And I think it's more than a semantic issue. As we start talking about this and you get your brain into the science and you're looking for certainty and you think about it, I think there's an urge for some of the science out there to be functional, so to have the evidence say yes, give me an answer, and I can dump a bunch of data in here and please give me answer on causation. It can't. It's just not going to get you there.

A final note on epidemiology, and this again came up extensively in Cedillo. There really hasn't

been a study done to look at this problem, the progression, particularly in Colten Snyder's case, looking specifically at a population of children with regressive autism symptoms and examining the associations with the administration of the MMR. A study hasn't looked at that. The design, the size and all the other issues that were bared out in Cedillo on studies that had been done tell us that that epidemiology is not particularly informative to resolving a case like this with this presentation of symptoms.

And we understand as Petitioners the importance of the case and the decision here. The Snyders, just as was the case with the other folks in the other test cases, are not anti-vaccine. Again, these are the folks that vaccinated their children. And nobody on this side of the case is saying we should stop doing that. And fortunately Thimerosal is now out of the pediatric vaccine supply, and that's good news.

But I do agree with Mr. Matanoski that whatever the outcome of this process, it certainly ought not to be that vaccines are inherently bad and to be avoided. That is not the message here, and that's not the message you're going to send by

weighing the evidence and rendering a decision that awards compensation to Colten Snyder.

THE COURT: Thank you very much. On behalf of my colleagues, I want once again to thank the Snyder family for coming forward and being a test case, the third test case in this first theory advanced on the causation of autism.

I want to commend counsel for both sides for their presentation in this case. I want to specifically thank the Wickersham & Bowers firm for coming forward late into this process and in five months getting this case ready to go to trial, obviously with the able assistance of the Petitioners' Steering Committee.

But it was important for purposes of the program and for how the office of Special Masters approaches these cases to have the benefit of three cases that have presented very different patterns for us that will result in a far better product I think from our office as we work to get decisions issued, again emphasizing that each Special Master will decide only that Special Master's individual case.

I'm the fortunate one who gets to go last, and so I've seen all of the evidence in all of the other cases and it's clearly all before me. The

issues of what evidence the other two Special Masters will be considering is still a bit up in the air.

We have a briefing schedule. I know that there will be no decision issued before the briefing schedule. I know that it will take some time to issue the decision even after the briefing is concluded and that we do have the specter out there of additional evidence relating to the U.K. litigation and the Unigenetics lab, but we will discuss how that comes in. I'll emphasize again as I did the last two days that it is time to stop talking about what we wish we had and make every effort to get it. If we can't get it, we'll resolve the case without it. Nobody has a perfect case.

But we have indicated our support for the parties obtaining whatever additional information from the U.K. litigation, from the experts who testified there or not testified but filed reports and may have filed other documents. We certainly support that because it is important not only that we come to the correct decision in our individual cases but that we come to the correct decision period, recognizing the impact that these decisions have on future cases.

So, with that, again, I thank counsel for both sides. It's been a pleasure working with you,

and I look forward to reading those posttrial briefs. We're adjourned.

(Whereupon, at 9:43 a.m., the hearing in the above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

DOCKET NO.: 01-162V

CASE TITLE: Colten Snyder by and through Katherine Snyder and Joseph Snyder, his natural guardians vs. Secretary of Health and Human Services

HEARING DATE: November 9, 2007

LOCATION: Orlando, Florida

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Department of Health and Human Services.

Date: November 9, 2007

Ron LeGrand, Sr.
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