

# UNITED STATES COURT OF FEDERAL CLAIMS

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THERESA CEDILLO AND MICHAEL )  
CEDILLO, AS PARENTS AND )  
NATURAL GUARDIANS OF )  
MICHELLE CEDILLO, )

Petitioners, )

v. )

Docket No.: 98-916V

SECRETARY OF HEALTH AND )  
HUMAN SERVICES, )

Respondent. )

Pages: 2870 through 2917

Place: Washington, D.C.

Date: June 26, 2007

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

THERESA CEDILLO AND MICHAEL )  
 CEDILLO, AS PARENTS AND )  
 NATURAL GUARDIANS OF )  
 MICHELLE CEDILLO, )  
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 Petitioners, )  
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 v. )  
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 SECRETARY OF HEALTH AND )  
 HUMAN SERVICES, )  
 )  
 Respondent. )

Docket No.: 98-916V

Ceremonial Courtroom  
 National Courts Building  
 717 Madison Place NW  
 Washington, D.C.

Tuesday,  
 June 26, 2007

The parties met, pursuant to notice of the  
 Court, at 9:02 a.m.

BEFORE: HONORABLE GEORGE L. HASTINGS, JR.  
 HONORABLE PATRICIA CAMPBELL-SMITH  
 HONORABLE DENISE VOWELL  
 Special Masters

APPEARANCES:

For the Petitioners:

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C O N T E N T S

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR</u>
<u>REBUTTAL WITNESS</u>					<u>DIRE</u>
<u>For the Petitioners:</u>					
Theresa Cedillo	2874	--	--	--	--

P R O C E E D I N G S

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(9:02 a.m.)

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SPECIAL MASTER HASTINGS: Good morning to

all of you in the courtroom and at home. We are here

for what would appear to be the final day of this test

case in the Omnibus Autism Proceeding.

Last night before we concluded the

government ended its case in chief, and I understand,

Ms. Chin-Caplan, that you want to call Mrs. Cedillo

back to the stand for rebuttal testimony.

MS. CHIN-CAPLAN: That's correct, Special

Master.

SPECIAL MASTER HASTINGS: Mrs. Cedillo,

would you please take the stand?

MS. CEDILLO: Do I need to clip this on?

SPECIAL MASTER HASTINGS: I think it would

be probably a good idea.

MS. CEDILLO: Okay.

SPECIAL MASTER HASTINGS: You can go have a

seat. Go ahead and put your microphone on, and then

I'll swear you in.

MS. CEDILLO: Okay. It says low battery.

SPECIAL MASTER HASTINGS: All right. Will

you raise your right hand for me?

MS. CEDILLO: Yes.

1           Whereupon,

2                           THERESA CEDILLO

3           having been previously duly sworn, was  
4 recalled as a rebuttal witness herein and was examined  
5 and testified further in rebuttal as follows:

6           SPECIAL MASTER HASTINGS: Okay. Ms. Chin-  
7 Caplan, please go ahead.

8           MS. CHIN-CAPLAN: Thank you, Special Master.

9                           DIRECT EXAMINATION

10           BY MS. CHIN-CAPLAN:

11           Q       Ms. Cedillo, I'd like you to tell us a  
12 little bit more about Michelle when she was younger.  
13 Did she babble at some point in her life?

14           A       Yes, she did. Can you hear me okay? I  
15 don't have a microphone, but okay.

16                       Yes, she did. I remember my niece,  
17 Jeniffer. Michelle was probably around nine months  
18 old.

19                       Let me clip this on here. Okay. Is that  
20 better? Okay.

21                       Michelle was about nine months old, and  
22 Jeniffer would come over. Michelle loved Jeniffer, my  
23 niece, and so they would have their own little  
24 conversation with the little baby babble back and  
25 forth. She had already been doing that for several

1 months.

2 Q At some point in time did she begin to  
3 acquire words?

4 A Yes, she did.

5 Q Could you tell the Court what words she had?

6 A Yes. She was very small, between the seven  
7 and nine month old range, where I would hold her on  
8 the bathroom sink and she could see herself, her  
9 reflection in the vanity mirror. I'd say where's the  
10 baby? There's the baby. She would touch the mirror  
11 and say be-be, be-be.

12 She continued to develop words. She would  
13 say ke-ke for kitties. We had some cats that would  
14 come by. We'd feed them outside. We had a big  
15 picture window in the front, so she would stand at the  
16 window and say ke-ke, ke-ke. She'd touch on the big  
17 window on the glass.

18 When the children were walking to school --  
19 we live very close to two schools. One of them is the  
20 grade school, so when the children would be walking to  
21 school in the morning she would bang on the window and  
22 go I, I, I, as though they could hear her, but of  
23 course they couldn't.

24 Let's see. When my mom would come over  
25 every morning -- well, almost every morning -- she'd

1 pick her up and hold her up to the crucifix, and she'd  
2 say who's that? Who's that? She'd touch it and then  
3 say that's Jesus, and so then eventually when my mom  
4 would say who's that she'd say Jesus.

5           When my husband would go to work she'd hold  
6 her hand up this way, and she'd go be-be addy, be-be  
7 addy.

8           She used to love to eat apple, so when I was  
9 slicing apple she'd see me. Apple, apple, apple.  
10 Then I'd give her the apple, and then she'd quit  
11 saying apple.

12       Q     So by the time she was about one year old  
13 she was saying all these things?

14       A     Oh, yes.

15       Q     And she was communicating all these things  
16 to you?

17       A     Yes.

18       Q     Did she do it on a repeated basis?

19       A     Yes, she did.

20       Q     Did you read to her at nighttime?

21       A     Yes, we did. My husband and I both read to  
22 her almost every single night.

23       Q     And when you read to her, what did Michelle  
24 do?

25       A     She had her favorite books, and she would

1 point to the characters on the pages. They were the  
2 baby board books, so if it was Mickey Mouse or if it  
3 was the babies.

4           There were some that ended, you know, 10  
5 babies, and she'd point to the babies and to the  
6 characters and the figures in the book.

7       Q     Okay. So when you said the word, she would  
8 pick out the individual characters in the book and  
9 point to them?

10       A     Yes.

11       Q     We saw a lot of Sesame Street on the video.

12       A     Yes.

13       Q     Was there a reason you were filming Sesame  
14 Street so often?

15       A     Yes. If you'll notice when you review the  
16 video, there's segments that were recorded. There are  
17 many segments of Sesame Street, but if you notice it's  
18 just the opening song. The reason for that is because  
19 -- well, two. One is Michelle loves Sesame Street and  
20 the characters on it, and she was starting to say Big  
21 Bird, or trying in baby talk to say Big Bird.

22           It sounded so cute. We repeatedly recorded  
23 that opening scene so we could try and capture her on  
24 the video saying Big Bird. I think towards the end  
25 there we got pretty close on one of them, but she

1 would get very excited and happy with the opening  
2 song.

3 Q Was that one of the words that she had, Big  
4 Bird?

5 A Big Bird and Bert.

6 Q Now, when she heard the music did she do  
7 anything?

8 A Oh, yes. My mom and dad were always telling  
9 her dance, Michelle. Dance to the music. She would  
10 respond, dancing with her hands and feet. You know,  
11 if she was sitting she'd move her hands and feet.

12 Q We noticed that your father used to play the  
13 harmonica to her.

14 A Yes. Yes, he did.

15 Q There was a scene that says what does Grampy  
16 do. What was that about?

17 A Oh, yes. That's in the 12-17-95 video. I  
18 asked her what does Grampy do, because that is what he  
19 would tell her. She went haaaa, like that, because he  
20 would show her the harmonica. This is what Grampy  
21 does, haaaa, to blow into the harmonica.

22 She was imitating. Michelle was associating  
23 my father, Grampy, with the harmonica with how he had  
24 taught her to do that sound.

25 Q Now, there was a scene in one of the videos

1 where Dr. Fombonne indicated that Michelle was  
2 demonstrating hand regard.

3 A Yes.

4 Q Do you know what hand regard is?

5 A Yes, I do.

6 Q Could you just describe to the Court the  
7 scene that Dr. Fombonne was referring to?

8 A Okay. It was the 12-17-95 video where she's  
9 in the ball pit. He's referring to where she pulls  
10 her hand back to look at it, but what you're probably  
11 not aware is that my mom, her grandmother, had been  
12 teaching her to blow kisses. Of course, when babies  
13 blow kisses, you know, she was just doing that.  
14 That's the motion she was doing.

15 I asked her where's Grammy. I don't think I  
16 said what's Grammy doing. I think I said where's  
17 Grammy, so Michelle went to blow her kisses, because  
18 that's what my mom had been showing her to do, but  
19 Michelle was also teething so her whole chin was full  
20 of saliva, so when she put her hand against her mouth  
21 and pulled it away her hand was all wet. She held it  
22 up to look at the saliva.

23 Q I'd like to show you some photos.

24 A Uh-huh.

25 Q Could you describe to the Court when this

1 photo was taken?

2           A     Okay.  That was taken when Michelle was  
3 approximately three months and maybe one and a half  
4 weeks, almost two weeks old.  It was Christmas, her  
5 first Christmas portrait.

6           Q     Is she smiling here?

7           A     Yes, she is.

8           Q     And this was her first official photograph?  
9 Is that it?

10          A     First official portrait I think.  She might  
11 have had one the day she was born, you know, when the  
12 photographer at the hospital comes in, but yes.

13          Q     And can you tell the Court when this photo  
14 was taken?

15          A     She was probably between six and seven, six  
16 to eight months range, and she was playing with a  
17 pumpkin and some little Halloween characters that we  
18 had bought her.

19                   I put a hat on her head, even though she  
20 wasn't going to wear it.  I just thought it was a cute  
21 picture.

22          Q     And when was this photo taken?

23          A     That was taken in November of 1995, so she  
24 would have been 14 months old.  That's about one month  
25 prior to the MMR vaccination.

1 Q And this photo?

2 A That photo was taken July 25, 2003. That  
3 was one day prior to her being hospitalized for 18  
4 days.

5 At that point she was very sick with  
6 malnutrition. She had a bleeding disorder from the  
7 malnutrition. She had been self-abusing very  
8 severely. She was in a lot of abdominal and other  
9 pain at this point.

10 She had uveitis -- you can see the redness  
11 around her eyes -- but we didn't know at the time what  
12 it was. She needed a lot of medical care at this  
13 point. She did not have a feeding tube, but did get a  
14 feeding tube through surgery placed while she was in  
15 the hospital during that stay.

16 Q Mrs. Cedillo, there seems to be some black  
17 and blue marks on her thighs.

18 A Yes.

19 Q Is this where Michelle was striking herself?

20 A Yes, it is.

21 Q Just one last question.

22 A Yes?

23 Q How has Michelle's illness affected your  
24 lives?

25 A It has greatly affected our lives. Michelle

1 was healthy and well and happy. She got the MMR. She  
2 got the fever and became very, very sick. It has been  
3 a long 10 or 10 ½ years since she became sick trying  
4 to find out what has happened to her and also trying  
5 to get the care that she needs.

6 Her subsequent illness has not only affected  
7 Michelle, but it's affected our entire family. As you  
8 can see, we have quite a bit of family support, which  
9 I'm eternally grateful for, but it has affected  
10 everyone. My parents have spent their retirement  
11 helping us to care for Michelle.

12 My husband doesn't take vacation anymore.  
13 All his time off is usually for driving to  
14 appointments. Actually, you know, on a bigger scale  
15 we don't even take vacations with Michelle because  
16 it's too unpleasant for her or she's too sick or she's  
17 just having a very bad time.

18 You know, she'll be 13. She'll be a  
19 teenager in just a couple of months. Her young  
20 childhood was spent instead of at the fun places, you  
21 know, the times you enjoy with your child, they were  
22 spent at doctor's offices or hospitals or getting very  
23 unpleasant procedures done.

24 I cannot emphasize enough how much suffering  
25 Michelle has endured. She is a very sick child. She

1 has such an enormous will to live and to go on, and  
2 she has given us all a lot of strength and she has  
3 taught us all a lot about life and about living and  
4 about trying and to keep trying. You know, it has  
5 been all encompassing completely.

6 MS. CHIN-CAPLAN: Thank you.

7 THE WITNESS: Okay. Thank you. I don't  
8 know if I'm done.

9 MS. CHIN-CAPLAN: No further questions.

10 SPECIAL MASTER HASTINGS: Any questions?

11 MS. RICCIARDELLA: We have no questions.

12 SPECIAL MASTER HASTINGS: Mrs. Cedillo,  
13 thank you very much again for all your testimony.

14 THE WITNESS: Thank you.

15 SPECIAL MASTER HASTINGS: You may be  
16 excused.

17 THE WITNESS: For the record, I just need to  
18 state also we all -- my family and all of us -- admire  
19 and want to thank you for the great respect all of you  
20 have shown all of us during this time.

21 SPECIAL MASTER HASTINGS: Thank you, Mrs.  
22 Cedillo. We are very grateful for you folks coming  
23 here and bringing Michelle to meet us.

24 THE WITNESS: Thank you.

25 SPECIAL MASTER HASTINGS: We greatly

1 appreciate your testimony and your participation  
2 throughout this.

3 THE WITNESS: Thank you. Thank you very  
4 much.

5 (Witness excused.)

6 SPECIAL MASTER HASTINGS: So I assume that  
7 concludes the Petitioners' rebuttal case?

8 MS. CHIN-CAPLAN: It does, Special Master.

9 SPECIAL MASTER HASTINGS: All right. For  
10 those of you, both in the courtroom and at home, who  
11 have watched a lot of trials on TV you know that often  
12 at the end of a case we have something called closing  
13 arguments, which is when the attorneys for each side  
14 sort of summarize or recap the testimony for the jury  
15 or the Judge and argue why, based on the testimony  
16 that's been heard throughout the case, their side  
17 should win.

18 In complex civil cases, and this certainly  
19 is a complex civil case, such cases where we don't  
20 have a jury, more common than closing argument is we  
21 have posttrial briefs, so instead of trying to stand  
22 up and summarize all the testimony orally in an  
23 argument before a jury, in a case like this the  
24 attorneys will take the transcripts, take all the  
25 hundreds or thousands of exhibits and thousands of

1 pages of records that are part of our record in this  
2 case and make their argument based on that, do it in  
3 written form in briefs.

4           The Petitioners will file a brief, the  
5 Respondent will file a reply brief, and the  
6 Petitioners will get another chance to do a brief. In  
7 a case like this that's a more efficient way of doing  
8 it. Because of the huge amount of documents and  
9 testimony in the record, the parties will certainly  
10 get a better chance to fully explain their view of the  
11 evidence by that means.

12           So we're not going to have the type of  
13 closing argument, a full-scale closing argument  
14 summary summarizing all the evidence that you might  
15 have expected.

16           However, the Petitioners' counsel has asked  
17 to make a brief closing statement -- we'll call it a  
18 closing statement instead of closing argument -- that  
19 is addressed more to the public listening or the  
20 families listening to the case or here in the  
21 courtroom more sort of summarizing giving us a sort of  
22 a closing summary to them.

23           I stress that it's not intended to fully  
24 summarize all the evidence of the case. Ms. Chin-  
25 Caplan and her co-attorneys will do that in a written

1 brief. She's just going to give a brief statement at  
2 this point.

3 With that, Ms. Chin-Caplan, why don't you go  
4 ahead?

5 MS. CHIN-CAPLAN: Mr. Powers will be doing  
6 that.

7 SPECIAL MASTER HASTINGS: I'm sorry. Mr.  
8 Powers is going to do it. I'm sorry.

9 Mr. Powers, come on up. We have a clip  
10 microphone for you. I know during the opening  
11 statements some of the people at home had trouble  
12 hearing. Since we're doing this for their benefit in  
13 large part, we want to make sure that they hear.

14 Please go ahead, sir, when you're ready.

15 MR. POWERS: Thank you, Special Masters, and  
16 thank you for the opportunity to give a closing  
17 statement here, and thank you for unburdening us of  
18 having to attempt to summarize all of the evidence and  
19 to try to do it in about 20 minutes.

20 That simply couldn't happen, but it is  
21 important to summarize the case for you all, sort of  
22 all of us who have been here, to sort of get our heads  
23 above the clouds of the evidence and really just walk  
24 through what we've heard and convey that message to  
25 the folks who are participating or attending

1 telephonically or via the web or transcripts or  
2 however.

3           The evidence summarized very, very briefly  
4 is straightforward. You have a case here that is a  
5 test case for the theory, the general theory that the  
6 combination of exposure to thimerosal-containing  
7 vaccines with a significant dose of ethyl mercury  
8 early in a child's life, combined then with MMR, can  
9 result in a complex system response that presents  
10 symptoms that can get diagnosed as autism.

11           And in particular a suppressed immune system  
12 from the thimerosal in the vaccines, the introduction  
13 of the attenuated live measles virus then persists,  
14 and the persistence of that virus leading to a complex  
15 biological process of disease and a wide range of  
16 symptoms from gastrointestinal symptoms to  
17 neurodevelopmental and neurological symptoms that in  
18 Michelle's case have been diagnosed as autism.

19           That's the evidence that you've heard from  
20 toxicologists, immunologists. You've heard virology  
21 testimony, gastroenterologists, pediatric neurologists  
22 all describing the evidence and presenting the  
23 evidence to you.

24           You've heard in sum a medical theory, a  
25 medical theory that links the exposures together, a

1 medical theory that links the vaccines and the vaccine  
2 component, thimerosal, to the injury.

3           You've heard a logical sequence of cause and  
4 effect not just in the timing of the vaccines and the  
5 occurrence of the injury, but the timing of the  
6 biological processes within Michelle, and you'll see  
7 in other cases in other children, so it's a logical  
8 sequence of cause and effect.

9           There is the temporal relationship, the  
10 timing relationship between the exposures and the  
11 occurrence of the injury. All this has been supported  
12 by the evidence. All of this is biologically  
13 plausible, and we posit that more likely than not in  
14 Michelle's case. The Petitioners' evidence describes  
15 what happened. It describes causation, and it  
16 describes it in a way that meets the burden of proof  
17 in this program.

18           One thing you don't need to be reminded of,  
19 but perhaps folks who are listening in, the standard  
20 is not scientific certainty. It is not scientific  
21 certainty, and we certainly concede, as we did in our  
22 opening and as we have all along, that there is debate  
23 on the science. There's a lot of debate. There's  
24 been over two weeks of debate in this room on the  
25 science, but the burden isn't certainty. It's more

1 likely than not, and that burden has been satisfied.

2           We've heard from an army of experts from  
3 both sides, but particularly from Respondent's side, a  
4 huge amount of evidence arguing that this just  
5 couldn't be, but when we sort through all of that  
6 evidence there's really no other cause that, if  
7 posited, is viable. This is the more likely cause.

8           I mean, you've heard everything from  
9 genetics, but nobody's been able to associate a single  
10 gene with a single symptoms. You've heard  
11 epidemiology that well, doesn't actually fit the facts  
12 of this case. I could go on and on, but those are the  
13 type of evidence that you've heard, despite the  
14 quantity, despite the quantity of that evidence,  
15 qualitatively doesn't add up to defeating the  
16 Petitioners' case here.

17           And this is a comment that is directed  
18 toward, and I'll be frank about it. It's directed  
19 more completely to people outside this room and  
20 particularly those in the news media. I've been  
21 following the press coverage. As you all might have  
22 seen too, Special Masters, there has been press  
23 coverage here.

24           One of the messages that I have picked up in  
25 the media is really sort of castigating the Cedillo

1 family and other Petitioners for even attempting to  
2 get compensation in this program, saying that if they  
3 get compensation then they're going to drive people  
4 away from vaccines and it's therefore an antivaccine  
5 message.

6           But for those folks who have been  
7 promulgating that message outside the building, you  
8 have to listen to what's going on inside the building,  
9 and there has not been a single witness on  
10 Petitioners' side of the case saying that vaccines are  
11 bad, that we should stop using vaccines, that the  
12 measles vaccine shouldn't be used, that the MMR  
13 vaccine shouldn't be used.

14           There has not been a single bit of  
15 antivaccine evidence in the room, and it can't support  
16 an argument outside the room that this family or the  
17 other families who are in the program are out to hurt  
18 vaccine programs, vaccine coverage and certainly have  
19 no interest in doing anything that could be  
20 interpreted as opening the doors to infectious  
21 diseases.

22           As we talked about in the opening, this case  
23 is about trust; the trust that the Cedillos and the  
24 other families had in the safety of the immunization  
25 program that they and their children participated in.

1           They trusted that program, and they  
2 unfortunately are among the rare -- fortunately it's  
3 rare -- number of children, but unfortunately for  
4 those people who fall into that rare group this is  
5 where they need to be, so they trusted the vaccine  
6 program and they now are trusting you all here in the  
7 Court of Claims to adjudicate their claims fairly.

8           It is about the social compact and it is  
9 about trust, and again to those outside the room the  
10 families should not be disparaged because they are  
11 doing what Congress has said they need to do if they  
12 think they were injured by coming here.

13           They're living up and they have lived up to  
14 their end of the social compact, and on the issue of  
15 trust in the social compact Mrs. Cedillo said it  
16 better than I could say it in terms of what's happened  
17 in this case.

18           The care, the attention, the resources that  
19 you, Special Masters, and the program have put into  
20 hearing this case and to setting up the omnibus  
21 proceeding to decide all these other cases is  
22 certainly appreciated and respected.

23           This hearing has been as open and  
24 transparent as anybody could hope, and that is a huge  
25 step forward for the families that are looking for

1 justice in the program because again, all of those  
2 families, regardless of the outcome, simply need to  
3 know that their trust in getting shots, their trust in  
4 following Congress' direction in coming here, will be  
5 reciprocated with fairness, with equity and with an  
6 open mind to hear the evidence and weigh the evidence  
7 under the appropriate standards.

8           And, as I said, in this particular case the  
9 evidence does support under the standards that are  
10 applicable in the program a fund for the Petitioners  
11 and then to use that decision to move forward to  
12 resolve other test cases and ultimately to resolve  
13 large numbers of cases that are awaiting decisions in  
14 the omnibus proceeding.

15           So again, thank you for the indulgence, so  
16 to speak, of having a few minutes here to close. We  
17 absolutely will be submitting posthearing briefs, and  
18 we look forward to speaking with you again in the next  
19 case, the next test case and probably many more to  
20 come over the course of the next nine to 12 months.

21           Thank you very much.

22           SPECIAL MASTER HASTINGS: Thank you, Mr.  
23 Powers.

24           We note that while you were speaking  
25 Michelle, who started the hearing with us here, has

1 come back into the room with her father, and I'll  
2 speak to them in a minute, but thank you very much for  
3 your comments.

4 Mr. Matanoski, did you want to make any kind  
5 of a closing statement?

6 MR. MATANOSKI: Yes, sir, I did.

7 SPECIAL MASTER HASTINGS: Please go ahead.

8 MR. MATANOSKI: Thank you for the  
9 opportunity. You know from our off-the-record  
10 comments that I did not favor making a closing  
11 statement here, knowing that there's closing briefs.

12 I know that you would prefer this to be  
13 brief, and I'm going to try to do that, but  
14 unfortunately I think it'll be a little bit longer --  
15 in fact much longer -- than what Mr. Powers had to  
16 say.

17 I would otherwise apologize, but because of  
18 the importance of the issue here and because I now  
19 have to come up here to explain the government's  
20 position and explain our view of the case, I won't  
21 apologize for taking that time because it's important  
22 to this case that you hear this.

23 What you haven't heard so far from the  
24 Petitioners -- not in their case, not in their closing  
25 arguments here -- is whether or not what they've

1 offered is good science for supporting their theory.

2           Now, Daubert requires that. You didn't hear  
3 that in Mr. Powers' closing statement. He jumped  
4 right ahead to the burden of proof. He missed the  
5 important, critical factor that goes into what you can  
6 consider as far as it goes to that burden of proof.

7           There's a reason for that, and that is  
8 because the Petitioners' case does not rest on good  
9 science. It rests on junk science. It rests on the  
10 science that is supposed to be left outside that  
11 courtroom door.

12           That's not supposed to come in for your  
13 consideration at all. It's not legitimate. It's not  
14 reliable. There's no studies. There's no textbooks.  
15 There's no literature and there is no reliable,  
16 legitimate testing behind what they've offered. We've  
17 shown each component of the PSC case to be  
18 inconsistent with the norms of good science. It's  
19 speculative, it's untested, and at the most critical  
20 junctures it's contradicted by known facts.

21           Now, I understand this is a bench trial, and  
22 there is a difference between a bench trial and a jury  
23 trial, but the Daubert standard still applies. Those  
24 standards must be applied even in a bench trial to  
25 determine whether or not you consider the evidence.

1           Now, there's a motivation behind the PSC to  
2 jump ahead to the burden of proof. They want you to  
3 turn a blind eye on whether the evidence they've  
4 offered is reliable. They want you to turn a blind  
5 eye on whether the evidence they've offered comports  
6 with the accepted standards of science, even though  
7 they are offering it as scientific evidence.

8           They've alleged that what the Respondent is  
9 requiring is scientific certainty as far as evidence.  
10 What's at issue here isn't what the Respondent is  
11 requiring. It's what the law requires. The law  
12 doesn't require scientific certainty. Daubert doesn't  
13 require scientific certainty, but it certainly  
14 requires science; good science, not junk science.

15           What you've been offered is a series of  
16 fanciful notions that are backed up only by the fact  
17 that someone has offered them who has a couple letters  
18 after their name, M.D. or Ph.D. That does not make it  
19 good science.

20           PSC wants to hide from that close scrutiny  
21 of the case. They don't want bright lights shining on  
22 their evidence. They don't want that bright light  
23 shining on the review of their evidence. They want to  
24 jump ahead to the burden of proof and argue it's just  
25 more likely than not.

1           That's the same standard that was applied in  
2 Daubert. It's the same standard that's applied in  
3 every civil case. More likely than not. It's nothing  
4 new. It's no lower standard here. It's the same  
5 standard. What we're discussing is whether or not  
6 they have the evidence that can even be considered for  
7 that standard.

8           Unigenetics is a perfect example of that.  
9 If you were to determine it was reliable testing that  
10 was done by Unigenetics then it comes in and you can  
11 consider it as far as it goes to whether they've met  
12 their burden of proof.

13           If, however, you take the initial step of  
14 deciding whether or not it's reliable and decide that  
15 it's not reliable as we think we've demonstrated, then  
16 it's not available to consider about whether they've  
17 met their burden of proof.

18           In sum, Daubert says check your junk science  
19 at the door. It's not coming in the courtroom. Then  
20 and only then do we go to the burden of proof and  
21 decide whether or not the Petitioners have met the  
22 burden of proof.

23           I'm going to be as terrible as I can be  
24 about the Petitioners' case here, the PSC case. It's  
25 at best speculation, idle speculation. Now, at worst

1 -- at worst -- it's a contrivance. It's a contrivance  
2 that's been developed and articulated and promoted by  
3 its chief proponent, and that's Andrew Wakefield. He  
4 promoted it for financial gain. Either way it's not  
5 science.

6           Now I'm going to turn a moment to the test  
7 case. I think one thing that's been abundantly clear  
8 over the past three weeks. We cannot do this in 4,800  
9 cases. We cannot do three-week trials in 4,800 cases.

10           So I'm going to offer to you this plea. Go  
11 beyond the specific facts of this case. Do not rest  
12 on those specific facts. Make application of your  
13 decision to the broader issues that are involved here,  
14 whether or not MMR causes autistic spectrum disorder.

15           The PSC offered this as a test case and  
16 treated it as such. Hold them to that. Go beyond the  
17 specific facts. We believe we've shown that Michelle  
18 Cedillo suffers from autism. She suffered from it  
19 before she ever got her MMR vaccine. Do not stop at  
20 that finding. Go forward and find on each and every  
21 factor particular to their theory of the case.

22           There's a reason to do that that's specific  
23 to this case. There's contingencies obviously. An  
24 appellate court may disagree with you on a particular  
25 factual finding, and you'll want those other findings

1 to be there to support whatever finding you have  
2 overall in the case.

3           There's also a reason for all these future  
4 cases so that we're not here doing three week trials  
5 again and again. That's to offer guidance on how  
6 those cases will be decided in front of you, how those  
7 remaining 4,800 cases will be decided.

8           As you recall, Petitioners Steering  
9 Committee said that this theory affects a significant  
10 number of cases. In fact, they offered or one firm  
11 offered that 80 percent of their 1,200 cases rise or  
12 fall on this theory.

13           You need to find whether or not Michelle  
14 Cedillo's autism occurred before her vaccine. You  
15 need to find whether the PSC has proven that autistic  
16 spectrum disorders can be caused by MMR.

17           Whether or not there's inflammation in  
18 Michelle's Cedillo bowel or intestines, you need to  
19 find whether or not MMR can cause autistic spectrum  
20 disorder. Whether or not they recovered measles virus  
21 from Michelle Cedillo's bowel biopsy, you need to make  
22 a finding on whether or not MMR causes autistic  
23 spectrum disorder.

24           I know I've mentioned several times in the  
25 course of these proceedings Andrew Wakefield and his

1 theory, and there's a reason for that. That's because  
2 all the strands through these cases come back to him.  
3 He presented bad science.

4 I'm going to run through the chronology  
5 again because it's important, the chronology of how  
6 this arose and how it was promoted. In 1996,  
7 Alexander Harris, a firm of solicitors in Great  
8 Britain, approached Andrew Wakefield and asked him to  
9 consult with them in cases involving MMR, allegations  
10 of MMR causing autism. Andrew Wakefield was paid  
11 55,000 pounds for his efforts at that point.

12 Andrew Wakefield in 1997 took out a patent  
13 for a monovalent measles vaccine. In 1998, he  
14 published the paper that caused the stir that we've  
15 now seen reinterpreted, rearticulated a number of  
16 times until more than 10 years later we have it in our  
17 courtroom today.

18 He did not reveal at the time that he  
19 published that paper that he had this financial  
20 interest. He did not reveal that several of his  
21 patients in that paper were in fact litigants in the  
22 MMR litigation.

23 In 1998, Andrew Wakefield approached John  
24 O'Leary and consulted with him. John O'Leary went on  
25 to set up Unigenetics, a company of which he was the

1 director and shareholder. Unigenetics' purpose was to  
2 test samples for the U.K. MMR litigation.

3 Now, you've heard testimony about the  
4 reliability of that testing. You've seen the papers  
5 that have come out of that lab. In fact, the Uhlmann  
6 paper that was discussed here at length and relied on  
7 so heavily by the Petitioners, the patients, some of  
8 the patients at least, some of the patients in that  
9 case study were MMR litigants.

10 There's a direct connection between that  
11 litigation and our litigation here. That litigation  
12 folded. Unigenetics went away, but we have it back  
13 here now in this case. It folded in 2004 after the  
14 whistle was blown on Andrew Wakefield and it was  
15 revealed his substantial financial connection with  
16 ongoing litigation.

17 Now I'm going to try to go through. In the  
18 sense of brevity, I'm not going to go through a long  
19 recitation of the evidence that's before you. The PSC  
20 evidence. Well, it certainly doesn't meet Daubert.

21 Now I want to step aside for a moment. Just  
22 saying that you're not antivaccine doesn't give you a  
23 pass on proving your good science. Just saying that  
24 we're not antivaccine and none of our experts are  
25 doesn't give you a pass on proving that you have

1 reliable, legitimate evidence backing up your theory.

2           It was interesting that the very next  
3 sentence after saying we're not antivaccine that Mr.  
4 Powers made was about safety. That is implicated in  
5 this case. Nothing that the Petitioners Steering  
6 Committee experts have offered is legitimate, but all  
7 of what they're saying goes to whether or not the  
8 vaccine is safe.

9           Dr. Aposhian, Dr. Krigsman, Dr. Kennedy, Dr.  
10 Hepner. All of what they're saying is going to this.  
11 Dr. Byers, Dr. Kinsbourne. It's all going to whether  
12 this vaccine is safe or not. That's what is at issue  
13 here.

14           A key point in their evidence is just flat  
15 out wrong, and I think we've shown that. A key point.  
16 Dr. Kinsbourne, for example, he was their key  
17 witness. He said in the course of three pages of the  
18 transcript, "I don't know that for a fact." "I have  
19 no idea." "Well, it's resident in the lymphatic  
20 tissue and maybe elsewhere, but I don't know that."  
21 "I don't know whether it's the same or different  
22 process." "I don't know."

23           Those were all answers in the course of  
24 pages in the transcript, 1134 to 1136, answers to  
25 questions about their theory. How can that make the

1 standard of reliable evidence?

2           Their key experts, Dr. Byers and Dr.  
3 Kinsbourne, make a living of testifying. That's their  
4 job. This courtroom is their place of business. It's  
5 not the labs. It's not the university. It's not the  
6 hospital.

7           Now, Petitioners want to skip ahead to the  
8 burden of proof, and this is a secondary argument for  
9 the Respondent. You only get there if the evidence  
10 that they offer has come through the courtroom door if  
11 it is good, reliable evidence. It is not.

12           I'm going to address the secondary argument  
13 here, the burden of proof. I just want it to be  
14 absolutely clear. We're only there if that evidence  
15 is reliable.

16           The burden of proof considers the type and  
17 quantum of evidence. You have to consider that before  
18 you get to that, whether they've met their burden. If  
19 they've offered scientific evidence it has to be  
20 qualified as such. They haven't here. They also  
21 don't meet their burden.

22           Their burden is to show a temporal  
23 association. Do you have one? Could Dr. Kinsbourne  
24 offer one here? He could not. At critical points he  
25 said "I don't know" on temporal association.

1           Dr. Aposhian, he had no idea how long  
2 immunosuppression would last. Where's the temporal  
3 association for the immunosuppression? He offered no  
4 testimony on it. Obviously if the onset of the  
5 disease has to be consistent with the temporal  
6 association and you haven't established one then you  
7 can't make that part of the burden.

8           They've never shown that this theoretical  
9 mechanism can occur in nature. They've offered you  
10 possibles, maybes, mights. Where is the evidence that  
11 it occurs in nature?

12           There's been a consistent theme in the PSC's  
13 case. It's a consistent theme about their burden  
14 here, and it isn't that they have to make more likely  
15 than not, though they pay lip service to that. It  
16 isn't that they have to make more likely than not.  
17 It's that they have to show it's not impossible. It's  
18 not impossible.

19           I will cite to you some articles that throw  
20 out this possible, and unless the government can prove  
21 that it's impossible I meet my burden of proof.  
22 That's what's been offered to you.

23           It's ironic that at this point that's when  
24 the PSC wants scientific certainty. When it's the  
25 government that's coming in and offering evidence that

1 may contradict the possibilities that they've offered  
2 they want scientific certainty.

3           Mr. Powers' cross-examination of Dr.  
4 Fombonne yesterday was a prime example of this. Now,  
5 the PSC has claimed that thimerosal-containing  
6 vaccines cause immunosuppression. They've never  
7 offered any reliable support in that, but when Dr.  
8 Fombonne came on the stand to talk about  
9 epidemiological studies that showed no association  
10 between thimerosal-containing vaccine and autism the  
11 PSC was quick to jump on Dr. Fombonne about dose.

12           Now, where did dose figure into their case  
13 before? Did Dr. Aposhian give you any idea of what  
14 the importance of dose was? He gave you a chart. He  
15 didn't say well, at this dose immunosuppression occurs  
16 and lower it doesn't. This is the critical dose.  
17 This is the amount that's necessary to cause the  
18 effect and this is how long the effects will last.  
19 Dose never played into that.

20           But when Dr. Fombonne is offering the  
21 epidemiological evidence, Mr. Powers jumps on him and  
22 says that study from Denmark had a different dose than  
23 is involved here. As it turns out, that dose in  
24 Denmark was 125 micrograms whereas here it was 137.5.  
25 Throw out a study that looks at the entire population

1 of children in Denmark because of 12.5 micrograms of  
2 ethyl mercury.

3           Do you have any evidence upon which to base  
4 that? Have they offered any evidence of how that  
5 amount is critical to their case; that that difference  
6 is somehow important or significant?

7           You heard Dr. Oldstone's article mentioned  
8 time and time again. What does that article show?  
9 Possibility at best about persistent virus. It's an  
10 article that's talking about LCM virus, a virus of  
11 mice. It's not talking about measles virus.

12           Again, it's a possibility, and our experts  
13 are confronted with doesn't this article say  
14 persistent virus can cause unusual disease, an article  
15 about LCM virus in mice? If we can't disprove that,  
16 apparently the PSC believes it has met its burden.

17           Now, I'm going to spend a little time on  
18 this, and I do beg indulgence on this, but I think --

19           SPECIAL MASTER HASTINGS: Mr. Matanoski, I  
20 thought we had a 20 minute limit on this, so make sure  
21 you conclude within that limit. I think you're at 17.

22           MR. MATANOSKI: I'm sorry. I didn't  
23 realize. I wish I had the little lights here on the  
24 stand to let me know that.

25           I was going to cover the new evidence that

1 was submitted yesterday. I thought that that would  
2 prevent us or would obviate the need for us to have to  
3 come in with another expert report in this case  
4 because of this new evidence.

5 SPECIAL MASTER HASTINGS: Why don't you go  
6 ahead and address that new evidence?

7 MR. MATANOSKI: Thank you, sir. This was  
8 offered yesterday. It's an editorial. It had the  
9 prestigious sounding name of the USA World SSPE  
10 Registry. You're not going to find that anywhere if  
11 you look for it.

12 Apparently this is Dr. Dyken's own creation.  
13 If you want to contact him you don't go to .edu. You  
14 don't go to .gov. You go to aol.com. This is in a  
15 nonindexed journal, and the interesting thing about it  
16 -- I'm going to cut my comments about this short. He  
17 says it's a newly described condition that he calls  
18 interestingly M-I-N-E, MINE. It's something that he  
19 calls. He's the first to describe it.

20 If you look through it he talks about  
21 they've actually now, according to him, identified  
22 measles virus in the CSF samples of patients and  
23 identified it to be vaccine strain. Now, this came  
24 out in 2004.

25 Look at the references in this paper, this

1 editorial, this editorial that appears in a nonindexed  
2 journal. They go back to Andrew Wakefield. The  
3 patients that he looked at apparently were from the  
4 litigation. The cases that he talked about, he  
5 referred to Alexander Harris.

6           This never has been shown by anybody else,  
7 never repeated, doesn't appear in an indexed journal.  
8 This is the same stuff we were dealing with with Dr.  
9 Bradstreet. I don't believe we even have to address  
10 this any further.

11           There's a mistake in the very first line.  
12 It says that SSPE occurs in immunocompromised  
13 individuals, and that's not true. You've already  
14 heard evidence on that.

15           I will wrap it up, sir. I did want to talk  
16 about credibility just briefly. Ask yourself on the  
17 credibility of witnesses where they're coming from.  
18 Is their place of business the hospital, or is it the  
19 courtroom? Do they get paid to testify, or do they  
20 testify to get paid?

21           Measles virus is a killing disease. That's  
22 been made abundantly clear by the testimony you've  
23 heard. There's no doubt that autism too is a  
24 devastating disease. You have to be made of stone not  
25 to feel sympathy, compassion and profound respect for

1 the families that have to deal with that every day of  
2 their lives and for the individuals who are afflicted  
3 with the disease.

4           Nevertheless, that doesn't give you a pass  
5 on having good science to support an accusation that  
6 an important weapon by public health eliminating  
7 measles virus is still available to do that important  
8 work around the world.

9           I've been talking unfortunately for a long  
10 time. I know that. Thirty minutes or so of argument  
11 back and forth here. In that 30 minutes, 26 children  
12 died of measles virus. That's what's at stake as well  
13 in this proceeding.

14           You need to rely on good science before you  
15 make your decision in this case. Thank you.

16           SPECIAL MASTER HASTINGS: Thank you, sir.

17           Mr. Powers?

18           MR. POWERS: Special Master, if I might? I  
19 have used 12 of the 20 minutes. I'm not even  
20 proposing to use the remaining eight minutes.

21           SPECIAL MASTER HASTINGS: Go ahead.

22           MR. POWERS: But if we could have a couple  
23 minutes to wrap up for Petitioners?

24           SPECIAL MASTER HASTINGS: Go ahead. Go  
25 ahead, please.

1 MR. POWERS: Just a couple of points to  
2 address what Mr. Matanoski raised.

3 The first one is on the reliability of  
4 evidence and the reliability of science. I just want  
5 to emphasize that what you're looking at when you're  
6 making that assessment is methodology.

7 Clearly, clearly the experts disagree on  
8 either side of the case about the conclusions to be  
9 drawn. Their opinions clash. Their interpretation of  
10 the evidence is dramatically different from one side  
11 to the other.

12 But Daubert and any other standard of  
13 evidence isn't about the outcomes and the opinions.  
14 It's about the methodology. When you look at the  
15 methodology that the experts in Petitioners' case have  
16 relied on, the methodology is sound and it is not junk  
17 and it is reliable, and the methodology has generated  
18 evidence that meets the burden of proof in the  
19 program.

20 So that's the first point; that when we're  
21 talking about reliability it's methodology, not the  
22 opinions generated that you should be assessing. The  
23 opinions then obviously come in when you're weighing  
24 the evidence, once you've decided that you're  
25 considering the evidence.

1           The second point to raise is that this is a  
2 program that's set up for a lot of reasons, but one of  
3 them is to avoid civil litigation, so when we hear the  
4 horror stories about the MMR, the measles vaccine  
5 being removed from the market, I believe one of the  
6 reasons that the families are here is that the claims  
7 get resolved here so that these folks don't end up in  
8 the civil system and don't start raising all of those  
9 issues about threats to the vaccine supply. This is  
10 the place to decide them, and you all know what the  
11 standards to apply to that decision are.

12           Then the final point I want to make is what  
13 this case is about. It is not about Andy Wakefield.  
14 It's not. It's about Michelle Cedillo. It's about  
15 4,800 families looking for justice. It's about the  
16 trust those families had.

17           And to hear a government's case that is  
18 based on a smear campaign, a character assassination  
19 campaign, hearsay, innuendo, traveling around the  
20 world collecting information, using government  
21 resources to build a smear campaign about somebody who  
22 is not a party, who is not a witness, who is not  
23 offering evidence is outrageous. It's not about Andy  
24 Wakefield. It's about the Cedillos.

25           Thank you.

1           SPECIAL MASTER HASTINGS: All right. Thank  
2 you very much.

3           I want to make a very few, brief comments  
4 before we adjourn.

5           First, on the immediate point about the  
6 closing arguments, again I stress that to talk about  
7 all the evidence, to summarize all the evidence that  
8 we have before us here would be hard for anyone. It  
9 would be really almost an impossible task, so that's  
10 why we are going to have briefs.

11           The full comments that both parties want to  
12 make about summarizing the evidence arguing their  
13 case, they're going to be able to do that. The brief  
14 can be as long as they want, and they're going to get  
15 a full chance to do that, take their time, do it fully  
16 and completely.

17           If I wasn't clear, originally we were going  
18 to propose no closing statements. The Petitioners  
19 asked to make a closing statement just to sort of wrap  
20 things up for the people listening in. We agreed to  
21 that.

22           I think maybe I was not as clear as I should  
23 have been in talking about the time limits on that,  
24 but I think we got a flavor for both sides here, and  
25 we're going to get more than a flavor. We're going to

1 get the full explanation in the closing briefs.

2 I also say to counsel we will also sometime  
3 later this week call up and set up another status  
4 conference for discussing the timing of the briefs and  
5 any other posttrial procedures we need to.

6 A few more comments, and then we'll be done  
7 here. First, we again want to thank the Cedillo  
8 family for coming to Washington, for being and staying  
9 with us throughout this very long hearing. We thank  
10 you folks for generously agreeing to have Michelle's  
11 case designated as the first test case in the omnibus  
12 proceeding.

13 Again, on behalf of myself and my  
14 colleagues, as we said at the beginning of the  
15 hearing, we extend our sympathy for all you've been  
16 through as you described on the witness stand today,  
17 for all Michelle has been through. I'm glad that we  
18 got to see and meet Michelle at the beginning of the  
19 case and that she was here again briefly with us this  
20 morning for the end of it.

21 We're trying to appreciate what you've been  
22 through, and again we also say that we tremendously  
23 admire the way that your whole family -- not just Mr.  
24 and Mrs. Cedillo, but we've met a number of members of  
25 family. The way the whole family has rallied around

1 her and done such a wonderful job taking care of her.

2 Mr. and Mrs. Cedillo and other family members, thank  
3 you again.

4 We also wish to thank the counsel for both  
5 sides who have really done such a wonderful job  
6 presenting the evidence to us. We appreciate how hard  
7 you've worked over the last few months to get ready  
8 for this and the hours you put in just in the last  
9 three weeks to actually present the case.

10 I want to thank the expert witnesses as well  
11 who appeared before us.

12 We want to thank again the Judges of the  
13 Court of Appeals for the Federal Circuit who allowed  
14 us to use their courtroom, and we want to especially  
15 thank all the employees of our Court and the Court of  
16 Appeals who have done such a great job assisting us  
17 and preparing for this hearing and conducting it. We  
18 have a tremendous debt of gratitude to them.

19 Next I want to acknowledge again the other  
20 people who are also very important to this proceeding,  
21 and that of course is the families of the other 5,000  
22 Vaccine Act claimants who have been diagnosed with  
23 autism or similar conditions.

24 Some members of those families have been  
25 with us in the courtroom at various times. Some have

1 been listening in via our telephone conferencing  
2 system, and others have followed the hearing by  
3 downloading the audio or reading the transcripts on  
4 our website.

5           To all the family members who have listened  
6 and those who haven't and to the Cedillo family, all  
7 three of us pledge to you again that we will consider  
8 very, very carefully the evidence that has been put  
9 before us, and we will give that evidence our complete  
10 and thorough study. We realize the great importance  
11 of the task assigned to us in deciding these cases,  
12 and we will give our greatest effort in carrying out  
13 that responsibility.

14           Finally, now that this hearing is finished,  
15 some of you may want to know when will we hear the  
16 decision. There are really two answers to that.

17           First, as to the specific case of Michelle  
18 Cedillo, as I noted before under the Vaccine Act  
19 statute, responsibility for a single case is assigned  
20 to a single Special Master, so I myself will consider  
21 the specific evidence to the Cedillo case and issue a  
22 written ruling in this case.

23           As you heard a few minutes ago, first both  
24 parties are going to file written briefs. That  
25 process realistically with the huge record we have

1 here, thousands and thousands of pages of evidence and  
2 beyond just re-reading the transcript here, obviously  
3 that briefing process will take several months. Once  
4 the briefing process has concluded I will issue a  
5 written ruling as soon as I can thereafter.

6           The second part of the question, of course,  
7 deals with the fact that this hearing we've had for  
8 the last two and a half weeks is about more than just  
9 Michelle Cedillo's case.

10           As I explained on the opening day of the  
11 hearing, Michelle's case is just one of an initial  
12 group of three test cases to be decided in the Omnibus  
13 Autism Proceeding, so during the past three weeks the  
14 parties for both sides have presented evidence not  
15 just about the particulars of Michelle's case, but  
16 also about the general causation theory, the first  
17 general causation theory of the Petitioners Steering  
18 Committee. That is, the general theory that MMR  
19 vaccines and thimerosal-containing vaccines can  
20 combine to cause autism.

21           Having heard that general causation  
22 testimony during this hearing, my two fellow Special  
23 Masters will undertake the process of applying that  
24 evidence to the other two initial test cases. They  
25 will be conducting evidentiary hearings concerning

1 those two test cases this fall.

2           Those evidentiary hearings will be much more  
3 limited in scope than this hearing hopefully because,  
4 as I previously stated, the testimony we heard today  
5 or over the last two and a half weeks on the general  
6 causation issue will be also available to be applied  
7 to those test cases.

8           So once those hearings are conducted Special  
9 Master Campbell-Smith will issue a written ruling in  
10 the particular test case assigned to her and Special  
11 Master Vowell will be issuing her written ruling in  
12 the test case assigned to her.

13           For updates concerning this case, the  
14 Cedillo case and the other two test cases and for the  
15 general progress of the Omnibus Autism Proceeding and  
16 the additional general causation theories that are yet  
17 to come, I would say keep checking the autism  
18 proceeding page on this Court's internet website.  
19 That's where we'll continue to post the information  
20 about it.

21           With that I thank everyone again for being  
22 here. We are now adjourned.

23           (Whereupon, at 10:04 a.m., the hearing in  
24 the above-entitled matter was concluded.)

25 //

REPORTER'S CERTIFICATE

DOCKET NO.: 98-916V  
CASE TITLE: Cedillo v. Secretary of HHS  
HEARING DATE: June 26, 2007  
LOCATION: Washington, D.C.

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 United States Court of Federal Claims.

Date: June 26, 2007

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