

UNITED STATES  
COURT OF FEDERAL CLAIMS

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TIMOTHY AND MARIA DWYER,	)	
PARENTS OF COLIN DWYER,	)	
A MINOR,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No.: 03-1202V
	)	
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent.	)	

**REVISED AND CORRECTED TRANSCRIPT**

Pages: 1 through 88  
Place: Washington, D.C.  
Date: July 21, 2008

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

TIMOTHY AND MARIA DWYER, )  
 PARENTS OF COLIN DWYER, )  
 A MINOR, )  
 )  
 Petitioners, )  
 )  
 v. )  
 )  
 SECRETARY OF HEALTH AND )  
 HUMAN SERVICES, )  
 )  
 Respondent. )

Docket No.: 03-1202V

Courtroom 6, Room 507  
 National Courts Building  
 717 Madison Place NW  
 Washington, D.C.

Monday,  
 July 21, 2008

The parties met, pursuant to notice of the  
 Court, at 8:58 a.m.

BEFORE: HONORABLE DENISE VOWELL  
 Special Master

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 DIRE</u>
<u>For the Petitioners:</u>					
Maria Dwyer	19	64	--	--	--
Timothy P. Dwyer	71	--	--	--	--

E X H I B I T S

PETITIONERS'

EXHIBITS:      IDENTIFIED      RECEIVED      DESCRIPTION

1	23	--	Pictures of Dwyer family members
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P R O C E E D I N G S

(8:58 a.m.)

THE COURT: Good morning. We're on the record in the matter of Dwyer v. Secretary of the Department of Health and Human Services, Case No. 03-1202.

This case is the third test case to consider within the context of the Omnibus Autism Proceeding whether thimerosal-containing vaccines have caused the autism spectrum disorder of an individual Petitioner.

This case is thus a continuation of proceedings that began on June 12, 2008, wherein my two colleagues, Special Masters Hastings, Campbell-Smith, and I, heard the testimony of a number of expert witnesses on the general question of causation, as well as evidence specific to two other Petitioners.

This week's proceedings will involve factual and expert testimony regarding a specific claim brought under the Vaccine Act by Mr. and Mrs. Dwyer, who are present here with us in the courtroom today, on behalf of their son, Colin.

Consistent with the requirements of the Vaccine Act, this case has been assigned to me, Special Master Denise Vowell, to determine whether the Dwyers are entitled to compensation under the Vaccine

1 Program for Colin's injuries. I alone will decide  
2 Colin's particular case.

3 I understand that we're going to hear the  
4 testimony of both Mr. and Mrs. Dwyer today. While  
5 they're bringing a specific claim on behalf of their  
6 son, Colin, they have also agreed to permit their case  
7 to be heard as a test case in the joint proceeding  
8 known as the Omnibus Autism Proceeding or sometimes  
9 referred to as the OAP.

10 These proceedings were designed as an  
11 efficient method to develop a body of evidence that  
12 will help the Special Masters to resolve approximately  
13 5,000 individual vaccine claims filed by families on  
14 behalf of their children who have a disorder on the  
15 autism spectrum.

16 The OAP permits the hearing of expert  
17 medical and scientific testimony within the context of  
18 an actual case that also serves as a test case on the  
19 general causation issue of whether routinely  
20 administered childhood vaccines can cause autism. The  
21 test case is decided on its particular facts, and the  
22 general causation evidence that is heard may be  
23 applied later in other specific cases.

24 In June, my two colleagues heard the  
25 evidence specific to the test cases of King and Mead,

1 and originally a third test case assigned to me was  
2 scheduled to be heard at the same time, but  
3 Petitioners in that case elected to withdraw from the  
4 OAP shortly before the hearing.

5 Therefore, the Dwyer family graciously  
6 volunteered to have Colin's case heard as the third  
7 test case, but logistical difficulties prevented it  
8 from being presented along with the King and Mead  
9 cases. As I indicated when I met you earlier today in  
10 the courtroom, we're all extraordinarily grateful to  
11 the Dwyer family for stepping forward and permitting  
12 Colin's case to be heard as our third test case.

13 Based on the sensitive and confidential  
14 nature of evidence in vaccine cases and the statutory  
15 protections against disclosure of evidence in such  
16 cases, most vaccine hearings are not open to the  
17 public.

18 Mr. and Mrs. Dwyer, like the two families  
19 who had their test cases heard in June, have taken the  
20 unusual and courageous step of permitting public  
21 access and public disclosure of most of the evidence  
22 in Colin's case so that other families affected by  
23 this omnibus proceeding have the benefit of hearing  
24 and reading the testimony that may help us resolve  
25 their claims. Respondent has consented as well.



1           The digital recordings of this hearing will  
2           be posted to the Court's public website. Today we  
3           anticipate just a one-time posting, and tomorrow we  
4           should have it posted twice, both at the noon break --  
5           we'll post the audio transcript of the morning's  
6           hearings -- and then after the conclusion of the  
7           proceedings we'll post the remainder of the  
8           transcript. Eventually the written transcript of  
9           these proceedings will be similarly posted.

10           Because the evidence in each of the three  
11           test cases may be available to help us resolve other  
12           cases in the OAP, Special Master Campbell-Smith is  
13           also present here in the courtroom to listen to the  
14           testimony today, and Special Master George Hastings  
15           will be joining us at some point. They are the other  
16           two Special Masters, as I've indicated, who are  
17           assigned to the autism docket.

18           I anticipate that these proceedings will  
19           last two days. They will begin with the opportunity  
20           for brief opening statements by counsel, followed by  
21           presentation of Petitioners' evidence. Respondent  
22           will then present evidence and, if desired, each side  
23           may present rebuttal evidence followed by closing  
24           arguments.

25           After the transcripts are completed, the

1 parties will have the opportunity to file posthearing  
2 briefs, and in due course I will enter a written  
3 decision in this case.

4 Turning just briefly to some housekeeping  
5 matters, I remind you that we are guests in this  
6 courtroom, and if you would comply with the courtroom  
7 rules concerning eating and drinking in the courtroom,  
8 the marshals will not be forced to evict anyone.

9 Turning then to the timing of the case,  
10 we'll likely finish early today due to the  
11 unavailability of one of Petitioners' witness. For  
12 the same reason, we'll begin early tomorrow morning,  
13 at 8:00, and we will probably continue tomorrow until  
14 the case is completed, which I anticipate would be  
15 around the usual closing time of 5 to 6 p.m.

16 We also have a difficulty with one of  
17 Respondent's witnesses, and for that reason the  
18 parties agreed in a status conference on Friday that  
19 if rebuttal evidence from that expert is needed it can  
20 be filed in writing at the conclusion of the case.

21 At this time I would remind you all to power  
22 down any cell phones, BlackBerrys or other electronic  
23 devices that may interfere with our recording of  
24 today's proceedings.

25 All right. Are there any matters we need to

1 take up on the record before we begin with opening  
2 statements?

3 MR. POWERS: Not for the Petitioners.

4 MS. RICCIARDELLA: Not from Respondent.

5 THE COURT: All right. Mr. Powers, you may  
6 proceed with opening statements.

7 MR. POWERS: Thank you, Special Master, and  
8 good morning. My name is Tom Powers. I'm one of the  
9 attorneys for the Petitioners Steering Committee, and  
10 I'm one of the attorneys that is here today assisting  
11 in the representation of the Dwyer family in the  
12 presentation of their son, Colin's, claim for  
13 compensation.

14 Also at counsel table with Mr. and Mrs.  
15 Dwyer are Attorney Mike Williams, my law partner, and  
16 the co-chair of the Petitioners Steering Committee  
17 Executive Committee that's been working on the OAP  
18 cases for the last five and a half, almost six, years  
19 now, and James Ferrell, the attorney from Houston,  
20 Texas, who's been representing the Dwyer family for  
21 the pendency of their claim in the program also five,  
22 nearly six, years now.

23 I'll keep my opening comments brief, Special  
24 Master, and I'll keep them brief because you actually  
25 covered some of them in your introduction.

1           The case that we are hearing today is the  
2 case of Colin Dwyer. He's a young boy, soon to be a  
3 young man, who was exposed per the pediatric vaccine  
4 schedule to a number of the standard childhood  
5 immunizations, and a number of those immunizations did  
6 contain thimerosal.

7           Thimerosal, as you know and the parties are  
8 all well aware, is the central issue in terms of the  
9 causation in this round of test cases. As you,  
10 Special Master, alluded to, there has been a  
11 significant body of general causation evidence that's  
12 been developed in these proceedings so far in this  
13 second round of test cases; that is, that thimerosal,  
14 in and of itself without regard to any other  
15 immunization on the schedule, can be a substantial  
16 contributing cause to the development of autism in  
17 some children.

18           As you and the parties heard in the general  
19 causation testimony back in May, really what we have  
20 focused on here is a particular presentation of autism  
21 called regressive autism. You will hear testimony  
22 from Mr and Mrs. Dwyer, you'll hear testimony from Dr.  
23 Mumper, and you've seen evidence in the medical record  
24 that Petitioners maintain demonstrates that Colin  
25 clearly suffered an autistic regression after a series

1 of thimerosal-containing vaccines, that his regression  
2 became apparent at approximately 20 months of age,  
3 that up until that age point developed normally.

4 He developed typically. He met his  
5 developmental milestones. He presented, and you'll  
6 hear this particularly this morning from Mr. and Mrs.  
7 Dwyer. He was a bright-eyed, active, engaged,  
8 playful, little boy who gave no sign, no signal and no  
9 symptom that he would regress into autism during his  
10 second year of life.

11 That's important evidence because, as you  
12 recall, Special Master, it's Petitioners' theory of  
13 the case here that thimerosal-containing vaccines can  
14 trigger a neuroinflammatory process in some  
15 particularly susceptible or vulnerable children.

16 It's an inflammatory process that upsets  
17 brain function, particularly upsetting brain function  
18 by leading to an imbalance of the chemical  
19 neurotransmitters that govern how signals are sent in  
20 the brain and that the exposure in a vulnerable child  
21 like Colin at a particularly important period of brain  
22 development where the brain is both growing, expanding  
23 in size, but also pruning and building its  
24 architecture for processing and for function.

25 That environmental insult, more likely than

1 not caused by the mercury in thimerosal, can lead to  
2 the type of symptoms that Colin experienced. And if  
3 you recall the general causation theory that  
4 Petitioners have advanced here, sort of the jumping  
5 off point, if you will, for the individual facts in  
6 this case, as well as the facts in Jordan King's and  
7 William Mead's case, is that thimerosal-containing  
8 vaccines belong on the list of possible environmental  
9 causes of autistic regression where one through  
10 differential diagnosis can rule out the other known  
11 causes.

12 To really break down the testimony and  
13 summarize it concisely, I think, that you'll hear over  
14 the next two days is that Mr. and Mrs. Dwyer will  
15 offer you the fact testimony and the history and the  
16 narrative to describe Colin's birth, his development,  
17 his progress, then his regression and then the medical  
18 care and the treatment that he has received since he  
19 regressed into autism and continuing on to the present  
20 day.

21 That's what you'll hear from the Dwyer  
22 family. You'll then hear from Dr. Elizabeth Mumper,  
23 who you were introduced to and heard extensive  
24 testimony from in May. Dr. Mumper, when she testifies  
25 tomorrow, will connect her clinical diagnostic

1 impressions of Colin to the general theory of  
2 causation so that in general as the jumping off point  
3 you have the idea that thimerosal-containing vaccines  
4 belong on the list for a differential diagnosis.

5 And Dr. Mumper will take the facts of this  
6 case and connect it to that general theory and offer  
7 you evidence that more likely than not in this  
8 particular case Colin's injury was more likely caused  
9 by these thimerosal-containing vaccines than anything  
10 else. That is in essence the case that you're going  
11 to hear for the next two days.

12 At the conclusion of the evidence -- I'll  
13 say it now, and you will certainly hear it at the end  
14 of the fact evidence tomorrow and in our closing of  
15 the general causation and individual cases at the end  
16 of the day tomorrow that Colin Dwyer, based on the  
17 facts in this case, based on the scientific evidence,  
18 the reliable scientific evidence, will present the  
19 case that satisfies this program's burden on  
20 Petitioners to show a mechanism of injury that is  
21 logical, that is scientifically supported, that has a  
22 logical sequence of cause and effect relating the  
23 vaccine exposure, in this case the thimerosal  
24 exposure, to the injuries that Colin suffered.

25 At the conclusion of that evidence, the

1 general causation evidence and the case-specific  
2 evidence, we will urge you to award compensation for  
3 Colin Dwyer under the program established by Congress  
4 to help children like this who would occasionally be  
5 injured by the administration of vaccines per the  
6 pediatric vaccine schedule. He'll be entitled to  
7 compensation, and we will urge you to so rule.

8 Thank you.

9 THE COURT: Ms. Ricciardella?

10 MS. RICCIARDELLA: Yes, ma'am. Good  
11 morning, Special Master. My name is Lynn  
12 Ricciardella. I'm from the Department of Justice, and  
13 I represent the United States in this litigation.

14 I have just very brief opening remarks that  
15 are specific to this case because I'm aware of the  
16 Court's July 3 order that said that the general  
17 causation evidence for Theory 2 is now closed.

18 It is Respondent's understanding that the  
19 case before you today, the evidence that you will hear  
20 today and tomorrow, concerns specific causation only  
21 as it applies to the facts of Colin Dwyer, and that is  
22 how Respondent will approach this case and present its  
23 evidence in this case.

24 Now, one of the most important aspects of my  
25 opening remarks, however, is to take the opportunity



1 to specifically address the Dwyer family and to  
2 specifically acknowledge them and thank them for  
3 graciously allowing their case and Colin's medical  
4 condition to serve as the third test case. I speak on  
5 behalf of the entire United States Government when I  
6 say you have our utmost respect and admiration for the  
7 love and dedication that you have shown to Colin.

8 Special Master, from the outset of the  
9 autism omnibus proceedings, the government has always  
10 advocated for the application of good science to the  
11 facts. Throughout these proceedings, we have been  
12 stressing the critical importance of reliable and  
13 credible scientific evidence. Indeed, reliable and  
14 credible scientific evidence is the bedrock of the  
15 vaccine program, particularly in causation in fact  
16 cases such as this one.

17 We have been asking the Court to evaluate  
18 the reliability and the credibility of the expert  
19 witnesses offered by both parties and concomitantly  
20 the reliability and the credibility of the evidence  
21 presented by those witnesses.

22 As you are very aware, Special Master, in  
23 Daubert the Supreme Court held that evidence is not  
24 scientifically reliable if it amounts to nothing more  
25 than unsupported speculation or subjective belief.

1 Now, Special Master, I know that you are intimately  
2 familiar with Daubert and its progeny, and I will not  
3 discuss it further. I just ask that as you listen to  
4 the evidence presented in this case that you let good  
5 science carry the most weight.

6 This case has been selected as a test case  
7 by the PSC. That is, it's supposed to serve as a  
8 paradigm for the majority of other cases that are  
9 currently pending before you and the other Special  
10 Master in the omnibus.

11 The evidence that Petitioners will offer in  
12 this case, however, is nothing but unproven hypotheses  
13 based on unreliable data. The speculative nature of  
14 Petitioners' evidence is borne out by the expert  
15 report of Dr. Mumper. In a nutshell, she has  
16 postulated that Colin Dwyer suffers from oxidative  
17 stress, mercury efflux disorder, neuroinflammation,  
18 methylation abnormalities and an inability to detoxify  
19 thimerosal. The majority of these hypotheses are  
20 based on her interpretation of laboratory results.

21 Now, mind you, Dr. Mumper is a pediatrician.  
22 As she did in the Mead and the King cases, she once  
23 again offers a plethora of hypotheses that cover many  
24 medical disciplines outside of her own. But in any  
25 event, you've already heard evidence presented during

1 the May trial that discounts and disproves each of the  
2 hypotheses that you will hear again in this case.

3 In contrast, Respondent will present  
4 evidence from one witness, who is an expert in autism  
5 spectrum disorders. We will present testimony from  
6 Dr. Bennett Leventhal, who is a tenured Professor of  
7 Psychiatry and the Director of the Center for Child  
8 Mental Health and Developmental Neuroscience at the  
9 University of Illinois at Chicago.

10 Dr. Leventhal has over 30 years of  
11 experience diagnosing, treating and researching  
12 autism. He will tell you that there is nothing unique  
13 or unusual about Colin's medical condition and Colin's  
14 clinical course, including the timing of symptoms and  
15 the symptoms themselves, than what he sees in the  
16 autistic children in his own practice.

17 I'll end, Special Master, and ask you once  
18 again that as you consider the evidence presented in  
19 this case over the next two days you let reliable,  
20 credible science be your guide, not speculation.

21 Thank you.

22 THE COURT: Petitioners?

23 MR. POWERS: Thank you, Special Master. Mr.  
24 Ferrell will be approaching the podium and will be  
25 presenting our witnesses today.

M. DWYER - DIRECT

19

1 MR. FERRELL: We call Maria Dwyer.

2 THE COURT: Mrs. Dwyer, if you'd step up to  
3 the witness chair? When you get there, would you  
4 raise your right hand?

5 Whereupon,

6 MARIA DWYER

7 having been duly sworn, was called as a  
8 witness and was examined and testified as follows:

9 THE COURT: Thank you.

10 DIRECT EXAMINATION

11 BY MR. FERRELL:

12 Q Would you please state your name for the  
13 record?

14 A Maria Dwyer.

15 Q And just so we have a clean record, would  
16 you spell your name?

17 A Sure. M-A-R-I-A, D-W-Y-E-R.

18 Q Maria, tell the Court where you were born.

19 A I was born in Queens, New York.

20 Q And where did you go to high school?

21 A I went to Monsignor Scanlon High School in  
22 the Bronx.

23 Q And when did you graduate from high school?

24 A In 1983.

25 Q Did you pursue some post high school

M. DWYER - DIRECT

20

1 education?

2 A I attended St. Johns University.

3 Q Did you graduate from St. Johns University?

4 A Yes, I did.

5 Q What type of degree did you obtain?

6 A I have a B.A. degree in Communication Arts  
7 and Sciences.

8 Q After college, where did you go to work?

9 A I went to work at NBC Radio.

10 Q And what did you do there?

11 A I was a desk assistant in the newsroom.

12 Q And after NBC Radio where did you go to  
13 work?

14 A I joined MTV Networks.

15 Q How long were you at MTV Networks?

16 A I was there for 12 years.

17 Q At some time you met your current husband.  
18 Can you tell me his name?

19 A His name is Timothy Dwyer.

20 Q All right. And just so the record is clear,  
21 can you spell his first name for us?

22 A Sure. It's T-I-M-O-T-H-Y.

23 Q When did you meet Timothy?

24 A I met Timothy in 1992.

25 Q And how long did you guys date before you

M. DWYER - DIRECT

21

1 got married?

2 A Three years.

3 Q And when were you married?

4 A We were married in April of 1995.

5 Q All right. Tell me about that day.

6 A Our wedding day?

7 Q Yes.

8 A We got married in Manhattan at a very, very  
9 small church. We had a double decker bus that then  
10 took everyone over to one of the oldest and most  
11 beautiful old hotels in New York City, and we had our  
12 wedding reception there with our family and friends.

13 Q We're here to talk about your son, Colin,  
14 correct?

15 A Correct.

16 Q You had a child after your first marriage.  
17 Can you tell me about the name of that child?

18 A Well, my first marriage was -- my only  
19 marriage was -- to Timothy.

20 Q Right.

21 A My first son was born in June of 1997.

22 Q And what is that child's name?

23 A His name is Shane.

24 Q And how old is Shane now?

25 A Shane is 11.

M. DWYER - DIRECT

22

1 Q Tell me about Shane, just about where he's  
2 going to school and what he's doing and how he's  
3 doing.

4 A Shane just completed fifth grade. He  
5 attends a parochial school in Bayside, Queens, called  
6 Sacred Heart, and he has been a student there since  
7 nursery school, so he started there at age three. He  
8 loves it. It's a wonderful school. He has excelled  
9 there.

10 At the end of this season he actually for  
11 the first time made the honor roll. His average this  
12 year has been an A, and it's been a wonderful,  
13 wonderful experience for him.

14 Q Is Shane involved in any extracurricular  
15 activities or any sports outside of the classroom?

16 A Yes. Shane takes gymnastics, and Shane is a  
17 runner on a track and field team from another parish  
18 near ours called St. Kevin's. He's the number one  
19 runner on the team.

20 Q Has Shane ever been diagnosed with any type  
21 of developmental disorder?

22 A No.

23 Q Has he ever been diagnosed with PDD?

24 A No.

25 Q Has he ever been diagnosed with autism?

M. DWYER - DIRECT

23

1 A No.

2 Q Has he met all of his developmental  
3 milestones?

4 A Yes.

5 MR. FERRELL: I think we have some pictures  
6 of your family. We want to put those up just so you  
7 can identify everybody for the Court.

8 THE COURT: Folks, are we going to make this  
9 a trial exhibit, these pictures?

10 MR. FERRELL: Sure.

11 THE COURT: So this would Petitioners' Trial  
12 Exhibit 1.

13 MR. FERRELL: Exhibit 1.

14 (The document referred to was  
15 marked for identification as  
16 Petitioners' Trial Exhibit  
17 No. 1.)

18 BY MR. FERRELL:

19 Q Okay. Can you identify the first picture  
20 and who that is there?

21 A Yes. That is Colin in the middle, and he's  
22 on a class trip at a bowling alley. The young lady  
23 behind him was his one-to-one teacher. Her name is  
24 Jaysheri Battelle.

25 The gentleman to the right of Colin, his



M. DWYER - DIRECT

24

1 name was Andy, and he was also an assistant in the  
2 classroom in the McCarton School that he was attending  
3 at that time.

4 Q About how old is Colin in this picture?

5 A He's five.

6 Q Can we go to the next picture? Can you  
7 identify this picture?

8 A Yes. That's Colin riding on a bus in New  
9 York City, and he's eating an apple, and he's  
10 listening to his iPod.

11 Q About how old is Colin in this photo?

12 A He's also five.

13 Q Can we go to the next photo? Can you  
14 identify this photo?

15 A Yes. That's Colin hanging around in a park  
16 near our home.

17 Q About how old is he in this photo?

18 A He's eight years old there.

19 Q Can we go to the next photo? Who do we see  
20 in this photo?

21 A That is my older son, Shane, and that is  
22 Colin in the orange stripes, and that's my husband,  
23 Tim.

24 Q All right. You mentioned Tim earlier. Was  
25 this also his first marriage with you?

M. DWYER - DIRECT

25

1 A Yes.

2 Q How is Tim or how was Tim employed?

3 A Tim was employed as a New York City  
4 firefighter.

5 Q And how long? Do you know when he started  
6 being a firefighter?

7 A He joined the fire department in 1987.

8 Q Is Tim still employed with the New York City  
9 Fire Department?

10 A No, he's not.

11 Q Why isn't he?

12 A He is retired.

13 Q Why did he choose to retire?

14 A He retired because he needed to manage  
15 Colin's program at home.

16 I had gone back to work. I was working  
17 full-time at the time of his retirement, and we  
18 decided that we needed to have one parent who was  
19 going to be with Colin on a full-time basis to manage  
20 him and manage his therapy and his programs and his  
21 education.

22 Q I think we have one more photo, or is that  
23 it?

24 THE COURT: Just a moment. How old was  
25 Colin in that photograph?

M. DWYER - DIRECT

26

1 MR. FERRELL: I'm sorry.

2 THE WITNESS: He was eight years old there.

3 BY MR. FERRELL:

4 Q And has Colin done any modeling?

5 A No.

6 Q How old is he in this photo?

7 A He's six there.

8 Q Is that the last one?

9 A Uh-huh.

10 Q I want to go back and talk to you a little  
11 bit about the time period leading up to Colin's birth.

12 At the time Colin was born, about how old  
13 was his brother?

14 A He was 17 months.

15 Q All right. Tell me about Colin's pregnancy  
16 or your pregnancy with Colin.

17 A It was very uneventful. We were very, very  
18 happy to conceive a second baby. We wanted to have a  
19 second child. Having just gone through a pregnancy  
20 with our first child, it was much less stressful. We  
21 knew what to expect.

22 We were very excited, and it was a very  
23 uneventful period. There were no complications.  
24 There were no issues. I worked full-time throughout  
25 the entire pregnancy, and it was just very easy.

M. DWYER - DIRECT

27

1 Q Did you take any type of drugs, illegal  
2 drugs, during your pregnancy?

3 A No.

4 Q Did you take any type of prescription drugs  
5 during your pregnancy?

6 A Just prenatal vitamins.

7 Q Did you smoke during your pregnancy?

8 A No.

9 Q Does your husband smoke?

10 A No.

11 Q Has he ever smoked?

12 A No.

13 Q Was anybody smoking around the child during  
14 your pregnancy or around you during your pregnancy?

15 A No.

16 Q Did you go to smoky areas during your  
17 pregnancy?

18 A No.

19 Q Tell me about the few days leading up to  
20 Colin's birth and how he was delivered.

21 A Because my first son was delivered naturally  
22 and weighed 10 pounds at birth, my obstetrician was  
23 concerned about another large baby and so we agreed  
24 that I would be induced at 38 weeks.

25 And so it was a scheduled inducement on

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1 November 10. We entered the hospital that morning. I  
2 was given Pitocin and an epidural. After about five  
3 hours I was ready to deliver, and Colin was delivered  
4 at 5:30 p.m.

5 Q Was there any fetal distress in the hours or  
6 days leading up to his birth, Colin's birth?

7 A No.

8 Q Was there any distress on your part leading  
9 up to Colin's birth?

10 A No.

11 Q How long were you in labor?

12 A About five hours.

13 Q And it was not a C-section? It was a normal  
14 delivery?

15 A Yes.

16 Q Tell me about Colin after he was born.

17 A Right after Colin was born he was amazingly  
18 alert. Just moments after his birth he opened his  
19 eyes, he looked around the room, he smiled a little  
20 bit. He was very responsive. He was very beautiful.  
21 He weighed 7 pounds, 14 ounces. He was a perfectly  
22 healthy, little bundle of joy.

23 Q We have the medical records in evidence, but  
24 do you recall his APGAR scores at birth?

25 A It was nine out of nine.

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1 Q Was your husband present at the birth?

2 A Yes.

3 Q What was his reaction?

4 A Well, having been a New York City  
5 firefighter and a New York City police officer and  
6 having delivered several babies in his career, he was  
7 very cool and calm and collected and really assisted  
8 in the birth in a very big way.

9 Q I want to go back and ask you a question in  
10 terms of your family history and your husband's family  
11 history.

12 Does your side of the family, whether it be  
13 sisters, cousins, parents, grandparents, is there any  
14 history of autism or PDD on your side of the family?

15 A No.

16 Q In terms of your husband's family, and I'm  
17 going backwards and forwards in terms of current  
18 cousins of Colin's. Is there any history or any  
19 events in his family of autism or PDD?

20 A No.

21 Q All right. Can you tell me about Colin's  
22 first year of life in terms of his communication  
23 skills and things you did with him?

24 A Colin was a very good baby. He very much  
25 followed in the same footsteps as our older son. He

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1 was a very good eater. He was a good sleeper. At  
2 three months he sat up on his own, at six months he  
3 was pulling himself up, and at nine months he started  
4 to walk. By 12 months he was a great walker.

5 He was a very happy baby. He loved to be  
6 held. If you smiled at him, he would reciprocate the  
7 smile. He made a lot of babbling noises. He was  
8 developing language. He loved to watch TV, and he  
9 loved to be around other babies.

10 Q What type of TV programs would he watch?

11 A He loved to watch Blue's Clues on  
12 Nickelodeon, and he liked to watch Sesame Street. He  
13 also liked watching Little Bear, and he liked watching  
14 Franklin.

15 Q Was the company you were working for  
16 involved in developing some of these programs?

17 A Yes, it was.

18 Q What type of programs did your company  
19 develop?

20 A At the time I was working at Nickelodeon, so  
21 we developed Blue's Clues, Little Bear, Franklin, Dora  
22 the Explorer, Jimmy Neutron, Rugrats.

23 Q When he watched these type of programs would  
24 Colin laugh or giggle appropriately while he was  
25 watching the programs?

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1 A Yes, he would.

2 Q All right. Tell me about his first year of  
3 life. I guess Colin was born -- can you tell me his  
4 birthdate again?

5 A Sure. 11-10-98.

6 Q So he was kind of an early Christmas  
7 present?

8 A Uh-huh.

9 Q Tell me. Up until his second Christmas  
10 where he would have been a little over one year old,  
11 tell me about Colin's social skills in terms of  
12 interacting with you and your husband and his older  
13 brother.

14 A He was very responsive to people. As he  
15 started to be able to walk, when I would come home  
16 from work at night he would run right to the door to  
17 greet me, hold onto my leg. Sometimes in the morning  
18 he and his older brother would hold onto my legs, not  
19 wanting me to leave.

20 A lot of times my husband would bring them  
21 to the railroad station where I would come home from  
22 work, and they would see me getting off the train and  
23 they would see me walking up the steps and they would  
24 get very excited.

25 He loved to be in a stroller. He loved to



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1 be outside. He loved going to stores. He loved toys.  
2 He could walk around a toy store and pick a particular  
3 toy he was interested in. He liked playing with toys.  
4 He particularly liked blocks. He liked building with  
5 blocks, and he loved stuffed animals.

6 Q Tell me about what he did with the toys he  
7 played with. Again, in his first year of life what  
8 types of things would he make and what specific types  
9 of toys would he play with?

10 A He liked when you would build something with  
11 blocks and then he could knock it down. He liked  
12 doing that, and he liked little bowling games where he  
13 could roll a ball and knock down pins. He liked that.

14 He liked to hug stuffed animals, and he  
15 liked to look at them in their faces. He would talk  
16 to them and play with them. He liked toys that  
17 talked, that if you squeezed them they would say a few  
18 words. He had a Little Bear that would talk, and he  
19 loved that very much.

20 Q Did he enjoy playing the drums?

21 A Oh, yes. He was a big drummer. He loved  
22 playing the drums. He not only liked playing the toy  
23 drums, but he liked taking out pots and pans and  
24 playing them with utensils.

25 Q Is that something he would do with his

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1 brother?

2 A Yes.

3 Q What other type of activities would Colin do  
4 with his older brother during his first year of life?

5 A Well, they were always together. They slept  
6 in the same room. Sometimes they would sleep in the  
7 same crib. They napped together. They ate together.  
8 They took baths together. They were always side-by-  
9 side, and he liked him very, very much. He smiled  
10 when he was near him. He would touch him.

11 He liked sitting next to him in the  
12 stroller, and he would watch him. He would watch him  
13 and often times take a toy out of his hand that he saw  
14 that he wanted. They had a nice rapport and a nice  
15 interaction.

16 Q Where do your parents live?

17 A Queens.

18 Q When you would visit your parents or they  
19 would visit you during his first year of life, was  
20 Colin able to identify his grandparents and was he  
21 happy to see them?

22 A Oh, definitely. Very, very happy. He had  
23 grandparents, both my parents and my husband's  
24 parents, and he got very excited whenever we went to  
25 either one's house.

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1 Q All right. I want to talk to you a little  
2 bit about Colin's progression from his first year.

3 Let me back up a little bit. Tell me about  
4 his second Christmas when Colin was a little over one  
5 year old. Tell me about the things you did at Colin's  
6 second Christmas.

7 A By then Colin was 13 months old, and he was  
8 a typical baby who was all over the place. He was  
9 walking very, very well then. He was climbing up  
10 stairs.

11 He had a love of Christmas ornaments and  
12 Christmas trees, and when we went to visit my in-laws  
13 he started removing Christmas ornaments from the tree  
14 and Christmas decorations my mother-in-law had around  
15 the house. He was digging into things he wasn't  
16 supposed to.

17 He was just a very precocious, little baby,  
18 and you had to watch him very carefully because he was  
19 into everything.

20 Q Was he able to open his own presents, and  
21 did he receive joy from opening his presents at that  
22 second Christmas?

23 A Oh, he sure did. He got a lot of presents.  
24 He ripped off the paper. He played with the paper a  
25 little bit. He liked the paper, but then he also

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1 liked the toys.

2 Q What type of toys -- do you remember -- did  
3 Colin get for his second Christmas? Do you remember  
4 any of them?

5 A Yes. He got cars and boats and balls, kind  
6 of real typical boy toys.

7 Q All right. I want to move ahead now and  
8 talk about Colin's development from the first  
9 Christmas or from 12 months, 13 months of age, until  
10 he was 20 months of age.

11 How did his communication and language  
12 skills in terms of developing words develop?

13 A He had a lot of babble, and then he started  
14 to form words. He said mama and dada, and he said  
15 ba-ba for his bottle. He said bye-bye. That was a  
16 big one. That was maybe his first or second word, and  
17 he also had a wave. He could wave bye-bye. He said  
18 baby. He said bear. He said up.

19 He had a lot of pointing and gesturing. He  
20 would pull you. If he didn't have the language, he  
21 would pull you say over to the TV set if he wanted you  
22 to put the television on or put a tape on.

23 Q What if he wanted a cookie?

24 A He could say cookie.

25 Q Was that one of his favorite foods?

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1 A Yes, it was.

2 Q Tell me, again and in the same timeframe  
3 from Colin's 12 months to 20 months in terms of his  
4 social skills and interacting with his brother and  
5 relatives and you and your husband.

6 A Well, you know, he just continued to  
7 flourish. He was able to play catch and a little bit  
8 more structured play activities. He very much liked  
9 roughhousing, and he liked rolling and tumbling.

10 At the time we put a set of bunkbeds into  
11 his room, and both he and his brother would jump off  
12 the top of the bunkbeds. We would put pillows on the  
13 bottom, and that was an activity they loved. They  
14 loved jumping on the bed. They loved jumping on all  
15 sorts of furniture. They liked swinging. They liked  
16 climbing.

17 They continued to develop side-by-side.  
18 They did a lot of play activities at the park. They  
19 were real outdoors kids. We had baby seats on the  
20 back of our bikes, and we would take them for rides.  
21 They loved that. They loved motion. They loved  
22 trains. They loved movement.

23 Q Did Colin have any sensitivities? Up until  
24 20 months, did he have any sensitivities to noises or  
25 loud noises?

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1 A No.

2 Q Did he have any obsessive compulsive  
3 behaviors that you noticed, whether it be lining up  
4 objects or anything of that nature?

5 A No.

6 Q How was his general temperament during his  
7 first 20 months of life?

8 A He was a very easygoing baby.

9 Q If he did become upset, were you able to  
10 console him?

11 A Oh, yes. You could pick him up. He loved  
12 his binkie, and he loved his bottle, and he loved to  
13 be held. He was very consolable.

14 Q Tell the Court how you structured your  
15 career with your husband's career and how during the  
16 first 20 months of Colin's life how you handled the  
17 childcare.

18 A Well, I was working at the time at MTV  
19 Networks. My hours were essentially 9:00 to 6:00. I  
20 did have some travel involved. It was standard  
21 business hours.

22 Tim was working as a firefighter, and within  
23 the fire department there's more flexibility with  
24 schedules. You can trade off tours with other  
25 firefighters and so Tim was able to structure his work

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1 schedule so that he worked primarily evenings and  
2 weekends and so he was the primary caretaker of the  
3 kids during the day, and then I was at night and on  
4 the weekends.

5 Q I want to turn to Colin's development after  
6 the 20 month period now, and I guess we would be in  
7 the fall of 2000. Is that right?

8 A Yes.

9 Q Did you notice any change in Colin's  
10 language and communication skills during the fall of  
11 2000?

12 A He wasn't using his language as much. He  
13 wasn't babbling as much. We started to notice changes  
14 in him around the fall.

15 Q What type of changes did you notice?

16 A Initially it was behavioral changes. He  
17 just suddenly did not want to sit in his stroller. He  
18 did not want to go out of the house.

19 He became extremely upset when we went to  
20 places that previously he enjoyed. He would scream  
21 and cry, and he was difficult to pick up. He did not  
22 use his language the way he had been using it  
23 previously.

24 Q Did bath time change from pre 20 months to  
25 after 20 months?

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1           A     Yes. He always loved his bath time, and  
2     after 20 months he refused to take a bath. It was a  
3     very, very difficult process to get him to take a  
4     bath. He completely rejected it.

5           Q     Tell me about Colin's third Christmas where  
6     I guess he would have been 25 months old. What was  
7     that like?

8           A     Well, every year on Christmas we go to my  
9     in-laws' house. My mother-in-law has a big, big party  
10    with lots of people and kids.

11                    We just didn't think that that would be  
12    right for Colin. He just didn't seem to enjoy those  
13    activities and so we decided to stay home. We had my  
14    parents and my sister and a close friend who came. We  
15    were going to have a little, small party.

16                    Colin was very sick and sad and unhappy. We  
17    had a Rubbermaid bin that we had some decorations in  
18    that was in the living room. Tim put some pillows and  
19    some blankets inside the bin, and he sat in there the  
20    whole time on Christmas. He never opened a present.  
21    He never acknowledged the other folks that were there.  
22    He just was completely docile.

23           Q     Moving into the spring of '01, can you tell  
24    me in terms of Colin's language ability what type of  
25    words, if any, could he speak in the spring of '01?



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1           A     He wasn't using any words in the spring of  
2     '01.

3           Q     So the specific words that he had a command  
4     of he had lost?

5           A     Yes.

6           Q     Tell me again in the spring of '01 about  
7     Colin's social skills in interacting with you and your  
8     husband, the relatives he previously knew and his  
9     brother.

10          A     He just was not comfortable in large groups.  
11     He did not like people. If my other son approached  
12     him and even got within a few feet of him, he would  
13     scream at the top of his lungs.

14                 He did not like to be touched. He did not  
15     like to be held. He did not like to wear clothes. He  
16     was extremely agitated, and he stopped eating. He  
17     lost weight. He developed diarrhea.

18                 He just would go to the park and would not  
19     want to participate in park activities. He just liked  
20     sitting alone in the corner.

21          Q     Where do you and your husband live?

22          A     We live in Bayside, New York.

23          Q     And did you have a park near your house?

24          A     We did.

25          Q     And is that something that you did on a

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1 frequent basis prior to these problems developing?

2 A Oh, he was there every day.

3 Q At some point did you become concerned in  
4 terms of seeking out some medical attention or care  
5 for Colin?

6 A We did.

7 Q Tell me how that came about.

8 A In March of 2001, we went to our  
9 pediatrician's office who we had been working with  
10 since the birth of Shane, and we explained to her that  
11 we were concerned about some of these issues.

12 She referred us immediately for a speech and  
13 language evaluation first for -- her greatest concern  
14 was his lack of language and the loss of language, and  
15 so she immediately referred us for an audiologist  
16 evaluation to test his hearing and said if his hearing  
17 turns out to be fine then she referred us for speech  
18 and language evaluation.

19 Q Who did you go to? What audiologist did you  
20 go to?

21 A Dr. Goldstein.

22 Q And how did that visit go?

23 A Colin was very difficult and was really  
24 unable to complete the testing.

25 Q How did you progress with Colin's evaluation

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1 after that point?

2 A Well, Dr. Goldstein said although the test  
3 results were inconclusive, it was his professional  
4 opinion that he did not have any hearing loss. He did  
5 not believe that, so from there we scheduled a speech  
6 and language evaluation.

7 Q And who did you do that with?

8 A We did it with a special ed preschool  
9 program in Queens called TIPSE.

10 Q And what was the results of that visit?

11 A They evaluated Colin not only for speech and  
12 language, but for his behavioral and his social, and  
13 they informed us that he was profoundly, severely  
14 developmentally delayed.

15 Q Do you recall approximately what month that  
16 was?

17 A That was in May of 2001.

18 Q How did you proceed with Colin's care after  
19 that point?

20 A After that we took him to a neurologist at  
21 NYU Medical Center to concur the diagnosis, which he  
22 did.

23 Q Do you recall his name?

24 A His name was Dr. Irving Fish.

25 Q And tell us specifically what Dr. Fish told

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1 you.

2 A Dr. Fish said that based on what he had read  
3 from the evaluation at TIPSE and his own evaluation of  
4 Colin that he was seriously delayed and his diagnosis  
5 was autism. He said it was moderate to severe.

6 Q Did you communicate with Dr. Fish about  
7 Colin's prior development in his early life prior to  
8 20 months' development?

9 A Yes.

10 Q What did he tell you about that?

11 A He said he has seen many, many, many more  
12 cases like this and that we needed to move very, very  
13 quickly and begin interventions with him. He was not  
14 very optimistic about his long-term outcome.

15 Q So after seeing Dr. Fish where did you go  
16 with Colin or what was the next step in his treatment?

17 A Well, then we went back to the group, the  
18 organization TIPSE, that had evaluated him. They also  
19 had a school that they ran, and first we met with  
20 social workers from the city of New York, and he was  
21 approved admittance into the TIPSE program.

22 Q What does TIPSE stand for, if you know?

23 A It's toddler and infant special ed  
24 preschool. It focused on -- all the children who  
25 attended it were on the autistic spectrum.

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1 Q Again, can you give us a timeframe for this?

2 A Yes. He started TIPSE in June of 2001.

3 Q And how long was he involved in TIPSE?

4 A He was there until December of 2001.

5 Q Tell us. During this time period, and let's  
6 go back. Let's talk about Colin's communication  
7 skills.

8 In the time period you just mentioned in I  
9 guess it would be the late summer, fall and early  
10 winter of 2001, what were Colin's communication  
11 skills?

12 A Colin had no words at that point, so we  
13 started him with an aggressive speech therapy program.  
14 He was simply learning to imitate sounds. That was  
15 the goal that they were working on.

16 Q What about his social reciprocity skills?

17 A He still extremely disliked being around  
18 people. He was just a profoundly unhappy person  
19 unless he was allowed to sit in the corner and play  
20 with toys in his own way.

21 He didn't want any interaction with adults,  
22 children. He didn't want the outside world. He  
23 didn't want toy stores. He didn't want birthday  
24 parties. He didn't want any of the things that he had  
25 liked earlier in life.

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1 Q Did he exhibit any characteristics of  
2 sorting or lining characteristics during that time  
3 period?

4 A Yes, he did.

5 Q Tell me about that.

6 A He would take his blocks, and he would sort  
7 them by color and then by size, and he would line  
8 them. He'd become very, very obsessed and upset if  
9 the line didn't somehow meet the criteria he had set  
10 up for it. It was very hard to determine what that  
11 was.

12 He began lining excessively all over the  
13 house any items. He liked anything in multiples,  
14 including food items. One morning he got up in the  
15 middle of the night and he took a dozen eggs out of  
16 the refrigerator and he lined them from the length of  
17 our kitchen all the way into our dining room.

18 Q Prior, in Colin's let's say eight month to  
19 20 month period, how would he play with his blocks?

20 A He would build. He could build. He could  
21 build little structures, and then he would knock them  
22 down and laugh.

23 If you attempted to build, he would get  
24 extremely, extremely upset.

25 Q During what time period are you talking

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1 about if you attempted to build?

2 A This was in 2001.

3 Q All right. Tell us about TIPSE. Were you  
4 pleased with the result in TIPSE?

5 A No.

6 Q Why not?

7 A Well, it was a preschool. It had a lot of  
8 students. It wasn't extremely intensive, and he  
9 didn't seem to make a lot of progress there.

10 Q At this point did Colin have any aversion in  
11 terms of clothing or diapers or things that you were  
12 trying to dress him in?

13 A Yes.

14 Q Tell me about that.

15 A He just suddenly did not like to wear  
16 clothes, and getting him dressed was an enormous feat.  
17 He would not like to put shirts on. He didn't want to  
18 wear pants. We had to switch his clothes to shorts,  
19 and he could tolerate that a little bit better.

20 He did not like to wear shoes. You had to  
21 really, really wrestle with him to get his shoes on,  
22 and he would take them off. As soon as he came home,  
23 he would strip and he would like to be naked in the  
24 house as much as he could.

25 Q Did Colin at some point start to develop

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1 self-injurious behavior?

2 A Yes, he did.

3 Q When was that?

4 A That was in 2001.

5 Q All right. What types of things would he  
6 do?

7 A He would bang his head on the wall very hard  
8 or just smashing his head. He would also punch  
9 himself in the head.

10 Q Is that one of the reasons you felt he might  
11 need a more intensive therapy program?

12 A Yes.

13 Q Where did you go from TIPSE?

14 A From TIPSE, in December we went for  
15 consultation with Dr. Cece McCarton, who was  
16 recommended to us as a developmental pediatrician in  
17 New York City who specialized in children with  
18 autistic spectrum disorders.

19 We took Colin to her in December of '01, and  
20 she advised us to take Colin immediately out of TIPSE  
21 and start a 40-hour a week home program with him where  
22 he could get intensive therapy and speech therapy,  
23 occupational therapy, physical therapy and ABA in the  
24 home.

25 Q Did you follow her advice?



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1 A We did.

2 Q How long did that progress?

3 A We did our home program for the entire year  
4 of 2001. It was a 40-hour a week program, plus we  
5 supplemented it with additional services in the center  
6 that Dr. McCarton ran in Manhattan, so he had a 40-  
7 hour a week program in the home, and then he was also  
8 going to the McCarton Center four days a week for  
9 additional speech and OT.

10 Q What was the cost of this program?

11 A The therapy at the McCarton Center costs  
12 \$100 an hour.

13 Q So how much a week were you spending on your  
14 son at that time?

15 A Well, at that time, in 2001, the home-based  
16 therapy was provided by the State of New York so we  
17 were just paying for the four hours a week that he was  
18 attending the McCarton Center.

19 Q And at some point did you progress? Did the  
20 home-based program help?

21 A No.

22 Q Where did you progress to after that point?

23 A Well, Dr. McCarton came out to our home and  
24 observed the program. Colin was then reevaluated, and  
25 he had not made progress. She was very, very upset,

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1 and she told us that we could not continue this home  
2 program and that we had to look for another  
3 alternative for him.

4 At the time she had just opened a school,  
5 but there were no slots available so we decided to  
6 place him in her center for 40 hours a week beginning  
7 in January of 2002.

8 Q And did you and your husband go and  
9 personally observe the therapy that Colin was getting  
10 at this center?

11 A Yes, we did.

12 Q Did they have an open door policy where you  
13 guys could walk in at any time and observe what was  
14 going on with Colin?

15 A Yes, they did.

16 Q Tell me about the type of therapy and  
17 treatment that Colin got at the center.

18 A At the center, Colin had a very intensive  
19 ABA program with speech therapy and occupational  
20 therapy.

21 There was some community-based therapy as  
22 well, but it was primarily focused on managing his  
23 problem behaviors and working through contingency  
24 plans that involved the Lovaas methodology with lots  
25 of positive reinforcement.

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1 Q What is that? You said the ABA?

2 A Uh-huh.

3 Q Tell us about what that involves.

4 A Well, ABA stands for applied behavioral  
5 analysis, and it's a scientifically proven methodology  
6 for working with children with autism.

7 It was developed by Ivor Lovaas in the '60s,  
8 and certain autism programs embrace that methodology  
9 for their programs. We had been advised and we had  
10 done research on our own and we very much embraced the  
11 Lovaas methodology, and we wanted Colin to be put in a  
12 program where he would be receiving that type of  
13 intervention.

14 Q What was the cost of the McCarton Center  
15 when you were sending Colin there for that period of  
16 time?

17 A The cost was \$100 per hour for therapy, and  
18 Colin was there 40 hours per week.

19 Q So how much a week was the cost of the  
20 therapy?

21 A \$4,000.

22 Q And how many weeks was he in therapy for?

23 A Oh, he was there for over 12 weeks.

24 Q Where did Colin progress after the therapy  
25 sessions you've been talking about?

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1           A       In March then of 2003 he then was accepted  
2       into the McCarton School.

3           Q       And what is the McCarton School?

4           A       The McCarton School is an ABA-based program  
5       for children with autistic spectrum disorder. It  
6       provides a one-to-one student/teacher ratio with an  
7       individualized curriculum and then home-based  
8       contingency support.

9           Q       Tell us about how long he was in the actual  
10       school.

11          A       Colin joined the McCarton School in March of  
12       '03, and he remained there until August of '06.

13          Q       That's a long period of time. Did you see  
14       an improvement? Tell us about the improvement if you  
15       did see some with Colin during that time period.

16          A       We definitely saw an improvement during that  
17       time period. Colin benefitted greatly from the  
18       intensive speech therapy he received.

19          Q       Did Colin develop some speech?

20          A       Yes.

21          Q       Did some speech come back?

22          A       Uh-huh.

23          Q       Tell me about that.

24          A       He did. I mean, they worked very  
25       intensively, and he went really just from being able

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1 to mimic sounds to being able to put together small  
2 words, and he had I'd say 50 or 60 single word  
3 utterances during the first two or three years at the  
4 McCarton school.

5 His language definitely was improving, his  
6 behaviors. They worked very intensively on an eating  
7 program, on a dressing program and on a walking  
8 program. Colin had enormous, enormous difficulty  
9 walking appropriately.

10 Q How much was the cost of the school?

11 A The tuition at the school is \$90,000.

12 Q Per?

13 A Per year.

14 Q How did you and your husband afford to pay  
15 for that?

16 A We liquidated our savings. We refinanced  
17 the mortgage on our home. My salary goes 100 percent  
18 towards support of his education.

19 Q I want to back up a little bit and take you  
20 back to the time period after Colin's diagnosis.  
21 You've talked quite a bit about his educational  
22 progression.

23 Let's talk about did you also seek some  
24 medical interventions that you were advised to do?

25 A Yes.

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1 Q What was the first major medical  
2 intervention that you sought for Colin?

3 A We made an appointment to see Dr. Bock, who  
4 was a practicing DAN doctor. We had found out about  
5 the DAN protocol from some other parents, and we were  
6 referred to Dr. Bock so we went to visit with him. He  
7 immediately wanted to start biomedical interventions  
8 based on the DAN protocol with Colin.

9 Q And what type of interventions did Dr. Bock  
10 conduct?

11 A Well, the very first intervention that we  
12 worked on was trying to deal with Colin's chronic  
13 diarrhea and weight loss and lack of weight gain or  
14 growth in a year. Dr. Bock felt that Colin had gut  
15 issues and gut damage, and we did a food allergy panel  
16 and it turned out that Colin was highly allergic to  
17 virtually every food group.

18 So we started him on a very strict gluten-  
19 free, casein-free diet, and we also began  
20 supplementation. He was taking about 15 different  
21 supplements, including digestive enzymes, to help him  
22 have more formed bowel movements.

23 Q Did Dr. Bock do any testing on Colin?

24 A He did.

25 Q What type of testing did he do?

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1           A     He did a lot of bloodwork on him.  Initially  
2     it was just really focusing on treating his gut, and  
3     then later we moved on to other interventions.

4           Q     What type of interventions did he conduct?

5           A     Well, after Dr. Bock felt that his gut was  
6     in a better place and we saw dramatic improvement in  
7     his stool and his bowel movement -- his stomach had  
8     been distended and actually stopped being distended.  
9     He had circles under his eyes.  They lightened up.

10                  We definitely saw his physical appearance  
11     improving.  Dr. Bock then wanted to move on and  
12     aggressively chelate him.

13           Q     And can you tell us about the chelation  
14     process and the results of the chelation?

15           A     Well, the chelation process is designed to  
16     eliminate toxins and heavy metals specifically from a  
17     person's body.

18                  The intervention that we used was a drug,  
19     two drugs.  One was DMSA and the other was ALA.  Dr.  
20     Bock had told us that these were both FDA approved  
21     drugs that had been in existence since the '50s and  
22     had been very effective in chelating people with heavy  
23     metal exposure.

24           Q     What was the results of Colin's chelation in  
25     terms of mercury exposure?

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1           A     Well, prior to starting the DMSA and ALA we  
2     took a urine sample, which was preprovocative, just to  
3     assess what his levels were prior to provoking him  
4     with the drugs.

5                     When we got those test results back, he  
6     basically showed that his metals that he had were in  
7     reference range. They were in the normal reference  
8     range. In fact, he didn't present as having any  
9     mercury at all.

10                    Two days later then we provoked him with the  
11    DMSA and the ALA, and we collected a second urine  
12    sample. When we got the test results for that, we saw  
13    that his level of mercury was all the way off the  
14    sheet.

15            Q     After the chelation, what was the next  
16    intervention you attempted with Colin?

17            A     After that we did glutathione infusions.

18            Q     What is that?

19            A     Glutathione is also a very potent  
20    antioxidant. It's a chelator, and it helps detoxify.  
21    We did about 30 IV infusions of glutathione.

22            Q     Did that help?

23            A     No.

24            Q     What did you do next?

25            A     We did methylcobalamin. We did 50



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1 methylcobalomin shots.

2 Q All right. And did that work, or did it  
3 improve Colin's condition?

4 A Very minimally.

5 Q Subsequently after Dr. Bock did you move on  
6 and see someone else?

7 A We did.

8 Q Who was that?

9 A We moved on to see Dr. Russell, and he runs  
10 the Northern New York Autism Clinic.

11 Q All right. And what did you do with Dr.  
12 Russell?

13 A Dr. Russell implemented --

14 Q Can you give us a general timeframe? I'm  
15 sorry.

16 A Oh, sure. Sure. Well, we started with Dr.  
17 Bock in April of 2002, and after two years --  
18 actually, it was a little more than two years. It was  
19 June of 2004. We spoke with Dr. Bock about the fact  
20 that we felt that we had basically utilized every  
21 intervention under the DAN protocol that was really  
22 available at that time.

23 We were generally very happy with the  
24 interventions because although we didn't see any  
25 dramatic results after one particular intervention,

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1 Colin was continuing to progress nicely in development  
2 and language acquisition and improvement in his  
3 problem behaviors.

4 So we sort of felt that we wanted to take  
5 another turn and look at some other type of  
6 interventions, so we researched the NIDS protocol,  
7 which a lot of people who implement the DAN protocol  
8 do a sort of a next step.

9 That protocol focuses on viral issues,  
10 fungal issues in the gut, and it also prescribes an  
11 SSRI antianxiety drug. We tried those interventions  
12 next.

13 Q Did they improve?

14 A They did.

15 Q Did you ultimately put Colin on an SSRI  
16 drug?

17 A Yes.

18 Q Is that something you and your husband  
19 wanted to do?

20 A Absolutely not.

21 Q Why not?

22 A These drugs are not approved for long-time  
23 usage in children. They're not approved for any usage  
24 in children. There's no studies that implicate what  
25 the long-term damage could be.

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1           These are very, very powerful, dangerous  
2           drugs, and we did not want to subject a child to any  
3           possible further damage.

4           Q     Has the SSRI drug helped with Colin?

5           A     It has.

6           Q     I want to go back. Has Colin ever to your  
7           knowledge been evaluated for any comorbid factor of  
8           mental retardation?

9           A     Not formally, no.

10          Q     Was there an informal evaluation of Colin  
11          that you can tell us about in terms of any comorbid  
12          factor of mental retardation?

13          A     There was an incident when he was at the  
14          McCarton School where they were implementing a program  
15          with all the children. It was called PECS.

16          Q     Who was running this program again?

17          A     It was Dr. Ivy Feldman, who was the  
18          executive director of the McCarton School.

19          Q     All right. And what are her credentials?

20          A     She's a Ph.D. psychologist.

21          Q     All right.

22          A     They were starting a program called PECS,  
23          which is Picture Exchange Communication System. What  
24          it really is compromised of is because children with  
25          autism are such strong visual learners, it actually

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1 provides each child with an individualized set of very  
2 small pictures that they can use to articulate their  
3 needs and their wants.

4 They were setting up these small books that  
5 each child would have with them, and in Colin's case  
6 if Colin was to perform a task which he was going to  
7 be reinforced for, he would be asked what he would  
8 like to work for for his reinforcement. He could open  
9 his PECS book, and he could look at his icons. He  
10 might have a drum or a guitar or a stuffed animal, and  
11 he could actually take the icon out and give it to the  
12 teacher to communicate what his desired object was.

13 It's been scientifically proven to be a  
14 highly effective communication vehicle for children  
15 with autism who have high receptive language, but have  
16 extreme difficulty with expressive language.

17 At the time I was observing and I saw all  
18 the children in the room were working on their PECS  
19 books with the exception of one student, and I asked  
20 Dr. Feldman why that one child didn't have a PECS  
21 book. She said that when they were evaluating the  
22 children for the PECS program they found that in this  
23 particular student's case she was not able to  
24 discriminate photos appropriately, so if you asked her  
25 to give you an icon of any object, a desired object,

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1 she was unable to do that.

2 She commented to me that it's at times like  
3 this that we then discover that some of these children  
4 also have a second diagnosis, which is mental  
5 retardation. It's very hard for the parents because  
6 they're not expecting to hear this because the kids  
7 are a little bit older at this point. It's a real  
8 blow to the parents.

9 I said do you think that Colin also has  
10 this, and she said absolutely not. He's a very fast  
11 learner, and we are very pleased with his progress.  
12 He absolutely has embraced PECS and is using it very  
13 successfully, and that would be an indicator for us.

14 Q Of all the doctors that you've seen with  
15 Colin over the last nine years, have any of them ever  
16 suggested to you that Colin might be suffering from  
17 any form -- mild, moderate or severe -- of mental  
18 retardation?

19 A No. In fact, the opposite. People  
20 constantly tell us how extremely bright he is, and  
21 although he has severe limitations he does learn very  
22 quickly. He problem solves extremely well.

23 We were told that from a very early age.  
24 People have told us that for a child with autism he  
25 displays a lot of intelligence.

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1 Q Tell me about sitting here today or at this  
2 time, what is Colin's functioning level in terms of  
3 can you go to a restaurant with him and sit down and  
4 eat dinner?

5 A No.

6 Q Describe his functioning level just a little  
7 bit for the Court.

8 A Sure. You know, we still continue to have  
9 to attack the behaviors very aggressively and on a  
10 daily basis. Colin just exhibits extreme levels of  
11 rigidity and obsessive-compulsive behavior, so he is  
12 very, very self-directed.

13 If there's an activity that he enjoys he can  
14 participate in that, but it is very, very difficult  
15 still to get him to participate in an activity that  
16 he's not interested in, so going to a restaurant -- an  
17 Applebee's or TGI Friday's -- he will still fall on  
18 the floor. He will scream. He will try to run out  
19 the door.

20 He will run around the restaurant. He might  
21 throw a chair. He can get aggressive behaviorally.  
22 He could still hit himself, and he would be very, very  
23 difficult to manage or control.

24 Q You mentioned that -- have you bonded with  
25 some other families with similar autistic children?

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1 A Yes.

2 Q Can you compare in terms of improvements?

3 You mentioned Colin had regained some speech, and you  
4 have obviously done a lot of different things in terms  
5 of medical and educational benefits to Colin.

6 Can you compare his progress with some of  
7 the other children who have not had those benefits?

8 A Well, when Colin first joined the McCarton  
9 School in 2003 he was in a classroom with three other  
10 little boys. We're still in contact with those  
11 families.

12 They didn't as aggressively embrace the  
13 biomedical side of autism treatment as we did, and  
14 although at that time all four boys were just similar  
15 in the sense that none of them had language and all of  
16 them had behavioral problems and sensory integration  
17 issues and eating issues, today Colin's functionality  
18 just in comparison to those other three children is a  
19 little bit higher.

20 Q Can you tell me about your husband's  
21 decision to retire from the New York City Fire  
22 Department, why he did that and his role in Colin's  
23 treatment over the last four or five years?

24 A He has always been an extremely hands-on  
25 father from birth and has always enjoyed changing

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1       diapers and pushing them in their carriage and taking  
2       them to stores and taking them all over the place,  
3       parties and firehouses and everywhere.

4                     At the time, I had left my job in 2001.

5             Q       Why did you do that?

6             A       I did that to manage Colin's program on a  
7       full-time basis.

8             Q       Okay.

9             A       You know, we found after we got our  
10       diagnosis that there really was no recommended course  
11       of treatment, and parents were really left to their  
12       own devices to have to figure out how you want to  
13       treat your child's autism.

14                    It takes an extraordinary amount of time to  
15       network with other parents and do the outreach and  
16       contact doctors and have evaluations done. It  
17       requires a full-time commitment to managing a child's  
18       program with autism.

19                    So I was doing that, and then he was in his  
20       twentieth year. He was eligible for retirement. He  
21       did not want to retire because he really loved his  
22       job, but we decided at that point that he would retire  
23       and take over as the full-time caregiver for Colin and  
24       that I would return to work.

25                    MR. FERRELL: All right. I don't think I



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1 have anything else for you at this time. The  
2 government may have a few questions, and we'll talk  
3 later. Thank you.

4 THE WITNESS: Thank you.

5 THE COURT: Mr. Johnson?

6 CROSS-EXAMINATION

7 BY MR. JOHNSON:

8 Q Good morning, Mrs. Dwyer. My name is Vo  
9 Johnson, and I'm representing the United States. I  
10 have really just a couple of questions for you.

11 You've submitted an affidavit in this case.  
12 You're aware of that, I guess?

13 A Yes.

14 Q I assume that that affidavit, you provided  
15 information to your attorney and they actually  
16 prepared the actual document? Is that correct?

17 A Yes.

18 Q Do you recall when you provided that  
19 information to your attorney?

20 A Sometime in June.

21 Q Okay. And the affidavit is dated July 15.  
22 Was that the day that you actually saw the affidavit,  
23 or had you seen it before that?

24 A Oh, I had seen it before that.

25 Q Okay. When did you first see it?

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1           A     I saw it sometime in June. I had it. I was  
2     in possession of it for a couple of weeks before I was  
3     actually able to have it signed and notarized.

4           Q     And the information that's in the affidavit.  
5     How did you go about getting that information? Did  
6     you review any documents, or was it just based on  
7     memory?

8           A     No. I have complete records of Colin's  
9     medical files and all of his evaluations, and I have a  
10    very strong memory of it all.

11          Q     Okay. In preparation for your testimony  
12    today, did you review anything other than what you  
13    reviewed for preparing your affidavit?

14          A     No.

15          Q     When did you first begin to think that  
16    Colin's autism was caused by vaccines?

17          A     After Colin had his last round of  
18    vaccinations, which was in July of 2000, he started  
19    his gradual regression shortly thereafter, and it then  
20    continued into 2001.

21          Q     So it was based on the timing, and that's  
22    what caused you to suspect the vaccines were  
23    contributing to it?

24          A     Yes.

25                MR. JOHNSON: Great. Thank you. Nothing

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1 further.

2 THE COURT: I may have a couple of questions  
3 for you. Let me just look at my notes here.

4 (Pause.)

5 THE COURT: Mrs. Dwyer, based on my review  
6 of the medical records, it appears that Colin received  
7 four Hepatitis B vaccines rather than the usual three.

8 Do you know? Have you reviewed his hospital  
9 records?

10 THE WITNESS: Yes.

11 THE COURT: His newborn records?

12 THE WITNESS: Uh-huh.

13 THE COURT: And did he receive a Hepatitis B  
14 vaccine?

15 THE WITNESS: At birth?

16 THE COURT: At birth.

17 THE WITNESS: I believe so.

18 THE COURT: And then, according to his  
19 medical records, it appears he received one when he  
20 was about two weeks old, and then he got two more  
21 thereafter.

22 THE WITNESS: Uh-huh.

23 THE COURT: Is that your understanding?

24 THE WITNESS: That's my belief, yes.

25 THE COURT: Okay. Sometimes we see that

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1 children were supposed to have a newborn vaccination  
2 and didn't get it. Sometimes the records are  
3 inconclusive. But as far as you're concerned, he got  
4 one at birth or shortly thereafter?

5 THE WITNESS: Yes, that's what I believe.

6 THE COURT: Okay. You described to several  
7 of the people who evaluated Colin that he did not  
8 appear to be making some of his developmental  
9 milestones at the same age as his older brother, and  
10 with two children fairly close together you'd have a  
11 pretty good memory of that.

12 Do you recall specifically what things he  
13 was doing or not doing that his older brother did at a  
14 similar age?

15 THE WITNESS: Well, probably after that  
16 Christmas of 2001 we became concerned really about the  
17 fact that the language was not progressing and  
18 flourishing the way we had seen it flourish with our  
19 other son, who also, you know, at age 20 months didn't  
20 have an expansive vocabulary, but we saw how his  
21 language was developing and we were seeing how Colin's  
22 in fact not only was not developing, but had  
23 regressed.

24 That was a great concern because that was  
25 really the first time we saw the two brothers

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1 developing on different paths. Colin had followed  
2 Shane's development path identically up until that  
3 point, and that started to concern us.

4 THE COURT: And that was the Christmas when  
5 you put him in the plastic crate?

6 THE WITNESS: Right.

7 THE COURT: Were there any things other than  
8 language that concerned you about the behavior  
9 differences between the two boys?

10 THE WITNESS: We started to see the physical  
11 symptoms around that time in the fall.

12 THE COURT: And by physical symptoms you're  
13 referring to what?

14 THE WITNESS: Well, the first thing that was  
15 very profound was just his complete rejection of food.  
16 He was a good, little baby, and he was eating baby  
17 food. He was eating some cereals. He was eating  
18 vegetables. He was just a good, little eater.

19 We were transitioning him onto whole foods.  
20 He was eating mashed potatoes, and he was eating  
21 pureed food. He was doing really nicely, and he just  
22 absolutely rejected every food that we put in front of  
23 him.

24 At the same time, he always had normal  
25 bowels. He never had any sort of diarrhea. He just

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1 developed chronic diarrhea. It would just leak right  
2 down his diaper. We were just so perplexed because it  
3 was so unusual that that would happen. We just tried  
4 to focus on that and introduce him to different foods.  
5 It was a real challenge. Then we saw the weight loss.

6 So it was that combined with the language  
7 component that was really worrisome for us, and then  
8 we went back to the pediatrician in March of 2001 and  
9 told her about these symptoms. She strongly urged us  
10 to get him evaluated immediately. She was really  
11 concerned.

12 THE COURT: You indicated when you were  
13 talking about the biomedical interventions that you  
14 had Colin on a gluten-free, casein-free diet, and then  
15 it appears from some of the medical records that you  
16 sort of fell off the gluten part, but kept him dairy  
17 free.

18 THE WITNESS: Uh-huh.

19 THE COURT: And why was that?

20 THE WITNESS: Well, his bowels had gotten  
21 progressively better, and we wanted to expand his diet  
22 because he needed more food. He needed to gain  
23 weight.

24 Then when he started at the McCarton School  
25 in the classroom he was in none of the other students

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1 were on the diet, and they were eating cookies and  
2 they were eating breadsticks and pretzels, and he was  
3 really interested in those foods.

4 It's very difficult when other children are  
5 eating that and you're eating a carrot stick. It was  
6 a source of behavioral issues for him, and we decided  
7 that we were going to take him off the diet and just  
8 see what the response would be.

9 Once we did, we actually saw that he  
10 flourished once he had wheat back in his diet. He  
11 could have some cookies, and he could have some  
12 pretzels. They became good reinforcers for him. It  
13 sort of was a gateway for us then to introduce other  
14 foods that he had rejected when he was also allowed to  
15 have foods that he liked.

16 THE COURT: I have no further questions.  
17 Mr. Ferrell?

18 MR. FERRELL: Thank you. No, Your Honor.  
19 We don't have anything else.

20 THE COURT: All right. Mrs. Dwyer, you may  
21 step down then, unless the government has anything in  
22 follow-up to mine. I'm presuming you didn't --

23 MR. JOHNSON: No, ma'am.

24 THE COURT: -- given the brevity of your  
25 original cross-examination.

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1 (Witness excused.)

2 THE COURT: All right. Shall we proceed  
3 then with our next witness?

4 MR. FERRELL: Petitioner calls Mr. Dwyer.

5 THE COURT: Mr. Dwyer, if you'll raise your  
6 right hand?

7 Whereupon,

8 TIMOTHY P. DWYER

9 having been duly sworn, was called as a  
10 witness and was examined and testified as follows:

11 THE COURT: Thank you.

12 DIRECT EXAMINATION

13 BY MR. FERRELL:

14 Q Would you please state your full name for  
15 the record?

16 A Timothy Patrick Dwyer.

17 Q All right. Mr. Dwyer, where were you born?

18 A I was born in Suffolk, New York.

19 Q All right. And what is your date of birth?

20 A 7-15-1963.

21 Q Where did you go to school?

22 A Northport. Northport High School.

23 Q And where is that located?

24 A Out in Northport, New York.

25 Q And did you receive any college?

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1           A     I have a two-year Associate's degree from  
2     Suffolk Community College.

3           Q     And what is your Associate's degree in?

4           A     Just general studies, arts and science.

5           Q     After college, what did you do?

6           A     I joined the New York City Police  
7     Department.

8           Q     All right. Why did you make that choice?

9           A     Just a career move that I always wanted, and  
10    I further wanted to get onto the fire department  
11    afterwards, and all the time counted for pension  
12    purposes.

13          Q     How long were you with the New York City  
14    Fire Department?

15          A     I was with the fire department for 16 years,  
16    and I was with the police department for four years.

17          Q     Was your father also a New York City  
18    fireman?

19          A     Yes, he was.

20          Q     For how many years was he on the fire  
21    department?

22          A     He did about 30.

23          Q     Tell me about meeting Mrs. Dwyer, how you  
24    met.

25          A     We met down in Rockaway and immediately fell

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1 in love.

2 Q Good answer. Tell us about you were  
3 involved in 9-11?

4 A I was.

5 Q Can you tell us about what you were doing on  
6 that day?

7 A I was working, just coming off a 24 hour  
8 shift in Engine 234 in Crown Heights, Brooklyn. We  
9 were out on another job when the towers got hit, so we  
10 weren't immediately dispatched. We were very lucky.  
11 I wound up going down in the second wave just after  
12 the towers came down.

13 Q Did you lose some friends in that event?

14 A I did.

15 Q I want to back up a little bit and talk to  
16 you about your son, your first son. Were you with him  
17 -- I'm sorry. Tell me about when your first son was  
18 born. How was Maria's pregnancy?

19 A Very well. She was a very healthy girl.  
20 She got big, and she had a big, beautiful, 10 pound  
21 boy. It was a struggle for him to be born. He was so  
22 big. He came out a little floppy, but bounced back  
23 really quick.

24 Q Tell me about Maria's pregnancy when Colin  
25 was born.

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1           A     The same. Like I said, she was a very  
2     healthy girl. No problems. It was probably easier  
3     than the first pregnancy sickness-wise. You know,  
4     again Colin was born with no complications. In fact -  
5     -

6           Q     Were you present when he was born?

7           A     I was, yes.

8           Q     All right. Tell me about that.

9           A     Well, like I said, the process was much  
10    easier than when Shane was born because he was so big.  
11    Colin had a nice delivery. A few minutes after he was  
12    cleaned up and wrapped the nurse presented him to me  
13    in my arms, and he was looking at me and smiling.

14                   I did something terrible. I asked Maria to  
15    take a picture of me while she was still recovering.  
16    And we have a picture of Colin looking at me with a  
17    big smile on his face. It was an amazing moment.

18           Q     Tell me. Since you spent a lot of time  
19    every day with Colin, tell me about his development in  
20    terms of his communication skills during his first  
21    year of life up until I guess it would be his second  
22    Christmas, but things you saw in him that maybe Mrs.  
23    Dwyer hasn't talked about.

24           A     He was very much like his brother. When I  
25    would look at him and smile at him, he smiled back at

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1 me. When I made noises to him, he'd try and repeat  
2 the noises or at least respond to me in baby talk. He  
3 would always reach out for me when he saw me.

4 He loved being tickled. Communication-wise,  
5 he had his basic words. Ba-ba for bottle. He called  
6 me dada, mommy. He had bye-bye. He said up. When I  
7 came to him, he always put his arms up and said up.  
8 Of course, cookie was one of his favorites.

9 Q Did he get along well with his brother?

10 A He loved him. Yes. He followed him around,  
11 tried to emulate his behavior.

12 All three of us were always together. We  
13 were all over the neighborhood. I had a double  
14 stroller, one that had like a little step in the back  
15 and a seat, so my older son could sit in the back and  
16 he was up front. We were road warriors. We were all  
17 over Bayside.

18 Q How far are you located from the park?

19 A About two blocks.

20 Q Is that something you did pretty much during  
21 Colin's first year of life?

22 A Basically every day we'd go to the park, and  
23 then I'd swing around and we'd hit all the stores on  
24 Bell Boulevard. We were just always out and about.

25 Q Tell me about the specific activities that

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1 Colin was capable of doing at the park.

2 A He was a very good climber. It was actually  
3 a brand-new park. They had redone it. The timing was  
4 like perfect for us.

5 They had a beautiful apparatus for climbing  
6 and a bridge, a couple of slides, this tunnel thing  
7 that Colin loved to go through. They had like a  
8 little piano, a very simple Row, Row, Row Your Boat  
9 kind of thing. I'd play it, and he'd always bang on  
10 things too. We had a blast down there.

11 Q During Colin's let's say first 20 months of  
12 life, did he have any aversion to loud noises?

13 A No.

14 Q Did you take him to the fire department?

15 A I took him to the firehouse all the time.  
16 He loved going down there and climbing on the rig,  
17 touching everything. I even took him on a couple of  
18 runs with the sirens going. He completely loved it,  
19 him and Shane.

20 We had Christmas parties there every year,  
21 and I guess when he was one we took him. He sat on  
22 Santa's lap and went down the pole. You know, we had  
23 a great family moment there.

24 Q Were fires being dispatched while you were  
25 at the Christmas party?

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1           A     Yes. Trucks were going in and out all day  
2 long. We were a pretty busy company.

3           Q     Were the sirens on?

4           A     Oh, yes.

5           Q     Did he have any problem with the noise?

6           A     No. The kids loved it. We would clear them  
7 all out of the way and watch the rigs go out. You  
8 know, it was part of the entertainment really.

9           Q     All right. I want to talk a little bit  
10 about his progression. Tell me about Colin's first  
11 Christmas and the things -- excuse me, his second  
12 Christmas when Colin was basically 13 months old and  
13 the things you did at that Christmas party.

14          A     We went out to my parents'. You know, as  
15 Maria stated earlier, he was just into everything.  
16 You know, all the bulbs on the bottom of the tree he  
17 was ripping off and playing with.

18                   The house isn't that big, so there were a  
19 lot of presents and paper all over the place, and  
20 Colin was just reveling in the excitement of the day  
21 and the chaos of the presents and paper all over the  
22 place, you know.

23          Q     From 12 to 20 months, what types of toys  
24 would Colin play with, and what would he do with the  
25 toys?

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1           A     Twelve to 20 months? He loved his cars. He  
2 loved his blocks.

3           Q     What would he do with the blocks?

4           A     You know, I'd help him build things. He  
5 liked to knock them down, or he'd appropriately play  
6 with his brother with the blocks.

7                     We actually had these big blocks that were  
8 made out of cardboard. You know, they looked like big  
9 bricks. We'd build forts down in the basement. The  
10 kids would play in it and knock it over. Very typical  
11 type behavior.

12          Q     Was Colin happy to see his cousins and his  
13 grandparents and other family members during the first  
14 20 months of life?

15          A     Yes, he was. He liked being around people.  
16 He liked the excitement of a lot of people in a room.  
17 He was very close to his brother. He was always  
18 following him around.

19                    You know, even when I took him out to public  
20 places, in stores and things like that, he just was  
21 very alert, looking around and taking it all in.

22          Q     Did you have an occasion on Colin's, I guess  
23 it would be his third Christmas when he was turning  
24 two years old? Tell us about taking him for photos.

25          A     Yes. My mother had gotten me some coupons,

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1 or something Sears, for to get a photo of Colin for  
2 his second birthday.

3 I finally wound up going like just before  
4 Christmas. The store was very crowded. It was a  
5 tough day, a tough day for me. My mother was with me,  
6 and Colin just did not want to be there. He was  
7 always trying to struggle out of my arms.

8 When we finally got through the line and got  
9 to the pictures, he would not sit still. He was  
10 crying the whole time. I was just bewildered. You  
11 know, my mother said there's something wrong with him.  
12 I just wasn't seeing it because I was so close to it.

13 You know, that was the first time someone  
14 ever really or I really thought about that there was  
15 some kind of problem. I mean, he had some little  
16 issues before that time, but that was the first time  
17 it kind of like made me think a little bit.

18 Q Tell me about after 20 months, the fall of  
19 2000, Colin's park play and what he did in the fall of  
20 2000 and spring of 2001.

21 A Well, a lot of our activities were -- we  
22 were still trying to do them. We were still doing  
23 them, but it was just becoming more and more difficult  
24 because Colin's behaviors were getting worse.

25 I'd take him to the park, and he would only



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1 want to sit in that tube that he used to climb through  
2 all the time. He wouldn't touch the keys on the piano  
3 anymore. He didn't have the energy or the activity  
4 that he had previously.

5 I would put him up on the slide, and he  
6 would just sit there. He would not slide down the  
7 slide. I was perplexed by that, and I mentioned it to  
8 Maria. I'm like you know, he doesn't like going down  
9 the slide anymore. I just didn't understand.

10 Q At some point were you with your wife when  
11 Colin's initial diagnosis was made?

12 A Yes.

13 Q Tell me about that.

14 A When we went to see Dr. Fish?

15 Q Right.

16 A When he gave us the official diagnosis? A  
17 tough day, you know, but it all kind of came together  
18 with the culmination of our struggle that last six  
19 months. You know, then we just had to get tough and  
20 take action.

21 Q At some point, when you say take action, did  
22 you make a decision to essentially start interacting  
23 or taking over Colin's care? When did that happen,  
24 and how did it come about?

25 A Well, I was Mr. Mom during the week. I was

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1 always very good with him. He always responded well  
2 to me because I was like the drill sergeant.

3 You know, then we got TIPSE going and we got  
4 some after school hours, home therapists in, and we  
5 just started on our road to his recovery.

6 Q What role did you play on that in terms of  
7 deciding to retire from the fire department? Was that  
8 a decision you planned on making?

9 A Oh, no. I enjoyed the department, but I was  
10 very good with him. I was basically his therapist at  
11 large and ran his home program. You know, my wife was  
12 working again.

13 Like I said, I had a very good functional  
14 control over him that was very difficult for most  
15 people just because he was so used to me. You know, I  
16 basically take care of all his needs and  
17 transportation, feed him and just keep working on his  
18 behaviors.

19 Q Why don't you contrast for me going to the  
20 beach with Colin pre 20 months and then maybe at two  
21 or two and a half years old?

22 A Like I said, we were road warriors. We were  
23 always out doing things. The beach was one of our  
24 favorites prior to his illness. He loved it.

25 We'd get there, spend an hour or two there,

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1 run around in the water all year long really because  
2 if we'd get a nice day we'd still take a ride out  
3 there because there would be nobody there and just  
4 enjoy the beach and the waves. He completely loved  
5 that activity.

6 You know, I also took him to the zoo.  
7 Queens has many, many places for us to spend an  
8 afternoon to kill time and expose the kids to  
9 interesting things.

10 And then after he got sick, that following  
11 summer in 2001 I remember trying to take him to the  
12 beach. A complete meltdown. He didn't want to touch  
13 the sand, didn't want to go anywhere near it, couldn't  
14 even get him out of the car.

15 You know, through therapy they just told us  
16 to keep taking him back, keep taking him back until he  
17 gets over his anxiety. You know, all that summer I  
18 kept taking him. We'd take a 45 minute ride out  
19 there, put one toe in the sand, or I'd drag him down  
20 to the water and put his feet in the water real quick,  
21 and then we'd leave. I just kept doing that over and  
22 over.

23 You know, today he loves the water now. We  
24 go to Jones Beach all the time after school and he  
25 swims for an hour. You know, it's a long, hard road,

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1 but he does respond and can recover from the anxieties  
2 and difficulties he has with these situations.

3 Q And you've been able to hear your wife's  
4 testimony today. Prior to 20 months of age, did Colin  
5 ever engage in any self-injurious behavior?

6 A Prior to 20 months? No.

7 Q Prior to 20 months of age, did you ever see  
8 him engage in any obsessive-compulsive types of  
9 behavior such as lining the blocks or the eggs that  
10 your wife talked about?

11 A No.

12 Q When did those type behaviors evolve?

13 A You know, in the fall or early in 2001 all  
14 those behaviors started coming out.

15 He did a lot of hand-flapping. That started  
16 during that time. The lining, the obsessive behavior,  
17 the not wanting to wear clothes. It was a very, very  
18 rough winter for us.

19 Q Tell us about the development of the hand-  
20 flapping.

21 A It was just something we'd never seen  
22 before. He would be like looking out of the corner of  
23 his eyes to see his hands like this. It was a self-  
24 stimulatory behavior.

25 Also he became obsessed with hair, like he'd

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1 come up behind Maria or anybody and just start  
2 stroking their hair. Now he wanted dolls. He'd see a  
3 doll in the store, and he'd want the doll just to play  
4 with the hair. Just a lot of his behaviors started  
5 coming out in full force.

6 Then when he started going to TIPSE in June  
7 there, the head-banging came into play. He would  
8 smash his head on the floor violently. They'd call me  
9 at TIPSE, and I'd have to come get him, you know.

10 Q Compare Colin's interaction with his brother  
11 pre 20 months with his post 20 month interaction with  
12 his sibling.

13 A Well, they were like Irish twins, you know.  
14 I mean, they were 16 months apart, and Colin followed  
15 him around everywhere. It was a beautiful thing.  
16 Like I said, we were three happy guys hanging out in  
17 Bayside, you know.

18 Q What about post 20 months?

19 A He did not interact with his brother, did  
20 not like when his brother came near him.

21 You know, basically like if you put him by  
22 himself, Colin would be okay, but any time like other  
23 people came in or you tried to engage him in something  
24 he didn't want to be engaged in, then the behaviors  
25 would come out.

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1 Q Tell me about today. What are Colin's  
2 functional capabilities. Tell me about what you're  
3 working with him on now.

4 A Right now in the afternoons we're doing  
5 mostly community-based therapy on him because he still  
6 can't sit in a restaurant.

7 I mean, now I have him sitting in McDonalds  
8 eating french fries, but we'd like to graduate to  
9 something higher end like Applebee's or something, you  
10 know, where we can all sit down and have a meal  
11 together like a legitimate family, but we're still a  
12 little bit away from that.

13 Also, he's much better in stores now. He  
14 can wait on lines. This summer I had him up in Lake  
15 George, and I took him and his brother and his two  
16 cousins to a water park by myself, which I was very  
17 proud of. He actually waited on lines beautifully.

18 When it's a preferred activity, he's getting  
19 better at waiting and not being so obsessive about  
20 cutting in line or throwing a tantrum because he's not  
21 going down the slide immediately, so I was very proud  
22 of him this summer when he did that.

23 Q What concerns do you have for Colin in terms  
24 of the future?

25 A You know, I don't sleep nights thinking

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1 about the future.

2 If I can get him to a place where he can  
3 function independently -- you know, I worry about his  
4 brother not being able to take care of him and winding  
5 up in a group home or someplace where he could be  
6 abused or lonely.

7 MR. FERRELL: I don't think I have anything  
8 else.

9 THE COURT: Are you ready to continue, Mr.  
10 Dwyer?

11 THE WITNESS: Yes.

12 MR. JOHNSON: The government has nothing.

13 THE COURT: I have no questions for you, Mr.  
14 Dwyer. Thank you very much. You may step down.

15 (Witness excused.)

16 THE COURT: Is that it for today, Mr.  
17 Powers?

18 MR. POWERS: Yes, Special Master.  
19 Petitioner has nothing else today. As we described in  
20 opening and as you described, we'll have Dr. Mumper  
21 available at 8 a.m. tomorrow.

22 THE COURT: All right. And then the plan  
23 for tomorrow is to follow Dr. Mumper with Dr.  
24 Leventhal and any rebuttal, if necessary, and we'll  
25 proceed then into closing arguments.

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1 MR. POWERS: That's correct, Special Master.

2 THE COURT: All right. So I think we have a  
3 plan for tomorrow.

4 Thank you all very much. Court is in  
5 recess.

6 (Whereupon, at 10:35 a.m., the hearing in  
7 the above-entitled matter was recessed, to reconvene  
8 at 8:00 a.m. on Tuesday, July 22, 2008.)

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REPORTER'S CERTIFICATE

DOCKET NO.: 03-1202V  
CASE TITLE: Dwyer v. Secretary  
HEARING DATE: July 21, 2008  
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: July 21, 2008

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