



GreenMedInfo exclusive excerpt from the upcoming book, [How to End the Autism Epidemic](#).

***"I also find, with a high degree of medical certainty, that the set of immunizations administered to Yates at age 11 months while he was ill was the immediate cause of his autistic regression because of the effect of these immunizations to further impair the ability of his weakened mitochondria to supply adequate amounts of energy for the brain, the highest-energy consuming tissue in the body."***

—Dr. Richard Kelley, Professor of Pediatrics, Johns Hopkins University (Kennedy Krieger Institute)<sup>1</sup>

There are only a few people in the world I believe could end the **autism** epidemic single-handedly. The director of the CDC would be one, the president of the American Academy of Pediatrics probably another. Dr. Andrew Zimmerman, the former director of medical research at the prestigious Kennedy Krieger Institute at Johns Hopkins University, would be the third.



For years Dr. Zimmerman served as a go-to expert in “vaccine court” to dispute parental claims that vaccines caused their children’s autism. And as the reigning national expert on the topic of autism in the scientific community, Dr. Zimmerman’s opinions held tremendous weight: His written testimony helped deny the claims of the families of more than five thousand children with autism during an Omnibus Autism Proceeding in 2009 in vaccine court, as I will explain in a moment.

In the late 1990s a young doctor fresh out of medical school joined the Kennedy Krieger Institute in Baltimore as a resident and worked closely with Dr. Zimmerman. His name was Jon Poling. In 2000 Dr. Poling’s nineteen-month-old daughter, Hannah, experienced a massive regression into autism after her **vaccinations**, much as happened to my son. Unlike my son, Hannah’s parents had access to the most sophisticated autism research center in the world, and Dr. Zimmerman and several of his colleagues, including Dr. Richard Kelley, who was serving as director of Kennedy Krieger’s laboratory, tried to figure out what had happened to her, and why.

Of course, everyone at Kennedy Krieger initially approached the idea that vaccines had played a role in Hannah’s regression skeptically, including Dr. Poling himself. He was a decidedly mainstream neurologist, having attended Georgetown to get both his MD and PhD. He and his wife Teri had fully vaccinated Hannah, and he’d explain many times over the next few years that he wouldn’t have believed it if he hadn’t seen it himself.

Through an unexpected series of events, Dr. Poling and Dr. Zimmerman, colleagues at the most prestigious autism research facility in the world, nearly ended the **autism** epidemic in 2008. Because of Hannah Poling, Dr. Zimmerman became convinced that vaccines are indeed capable of causing autism under certain circumstances, representing a change in his previously held positions. Like any good scientist, Dr. Zimmerman appeared willing to go where the evidence took him, even toward something as inconvenient as a vaccine-autism connection.

Dr. Zimmerman’s professional opinion about what caused Hannah’s autism, given the tremendous weight he carried within the scientific community and his long-time role as an expert witness, triggered a panic at both the CDC and the Department of Justice. It led to a quick twenty-million-dollar settlement with the Polings in 2010, but not before Hannah’s story became worldwide news.<sup>2</sup>

I’ve always had so many questions about the Hannah Poling case, Dr. Zimmerman, Dr. Kelley, and Dr. Poling. Soon after the news spectacle, the Polings disappeared from the public, never to be heard from again. Sources have told me that the Department of Justice made it clear to the Polings that if they wanted to receive their vaccine court compensation, they needed to keep quiet. They appear to have complied.

Very recently, however, Drs. Zimmerman and Kelley privately agreed to serve as expert witnesses in the first vaccine injury trial of any kind in a regular courtroom in more than thirty years. The trial is a medical negligence case in Tennessee, alleging that a pediatrician allowed a child to develop autism by vaccinating him when there was

clearly excessive risk, based on previous reactions he'd had to vaccines. The boy's name is Yates Hazlehurst, and he was one of three "test cases" in the aforementioned Omnibus Autism Proceeding back in 2009—only a year prior to the DOJ's settlement with the Poling family—a case that was lost partially based on the written testimony of Dr. Zimmerman.<sup>3</sup>

Drs. Zimmerman and Kelley, under oath, provided depositions for the trial as expert witnesses. What's significant is that in the future they would be testifying on behalf of the Hazlehurst family, confirming that in Yates's case, vaccines caused his autism. Yes, you read that right. In 2009 the Omnibus Autism Proceeding concluded that Yates Hazlehurst's autism was not caused by vaccination, a decision based partially on Dr. Zimmerman's testimony—and a decision that, significantly, served as the basis for denying claims to more than five thousand other children.

Fast forward to 2017, and Drs. Kelley and Zimmerman are expert witnesses for the same child, and they are both saying, "with a reasonable degree of scientific certainty," that vaccines caused Yates's autism.

Confused yet? I know I was. Let's start at the beginning.

## The "Vaccine Court"



If vaccines cause autism, you'd think "vaccine court" would be a great place to find the evidence for it. Compensated claims typically include extensive details about timelines, medical tests, and doctors' opinions. They read more like case reports in medical journals than legal settlements.

Established through the National Childhood Vaccine Injury Act of 1986, the original purpose of the vaccine court (officially called the United States Court of Federal Claims special masters) was to quickly and expeditiously pay any claims made by American citizens for **vaccine injury**. The vaccine court is buried within the Department of Health and Human Services (HHS), and when you petition the vaccine court because of a vaccine injury, you're actually suing the federal government, and the lawyer representing the government (and therefore opposing your claim) will be a Department of Justice lawyer. Due process in vaccine court is nonexistent. there's no jury, just a single court-appointed "special master" who hears your case and makes a decision.

Since 1989, when the vaccine court began to operate, these special masters have awarded more than \$3.8 billion to vaccine-injured Americans (children and adults).<sup>4</sup> Of the total cases filed since the court came into existence in 1998, there have been twelve hundred claims filed for death and eighteen thousand filed for injury. The **DTP vaccine** is the most common vaccine for claims to be filed against, with MMR in second place. Of the people who file claims with the court, approximately 34 percent end up receiving compensation; 2017 was actually the single biggest year for claims paid, with just over \$282 million.

Rolf Hazlehurst, an assistant attorney general from Tennessee, has been an outspoken critic of the vaccine court, particularly since he had to fight his way through it as a claimant on behalf of his son Yates, who he believes developed autism as a result of his

vaccinations. In a memorandum to the US Congress in 2013, Rolf Hazlehurst described the court:

*Vaccine court is not a court of law. It is an administrative proceeding in which the most basic rules of law do not apply. In vaccine court, the Rules of Discovery, Evidence and Civil Procedure do not apply. There is also no judge or jury. In vaccine court, the American legal system has been replaced by what is known as a special master. A special master is an appointed government attorney.*<sup>5</sup>

## Why Does the Vaccine Court Exist?

This may seem like an elementary question, but it's not. The purpose of the vaccine court is to protect the vaccine program, not to monitor vaccine safety or mete out justice. The year the vaccine court began operating—1989—is important to this story, because that's also the birth year many point to as the beginning of a meteoric rise in the number of children with autism. Three other potentially monumental things happened in 1989: the **hepatitis B vaccine** was licensed, the Hib vaccine was licensed, and, for the first time, a second dose of the MMR vaccine was recommended for all American children.

When the vaccine court was established in 1986, there were only three vaccines given in the United States—DTP, polio, and **MMR**—and vaccination rates hovered between 50 and 60 percent nationally.<sup>6</sup> Today, there are eleven vaccines for children, given in multiple doses, with vaccination rates hovering around 90 percent nationally. There is an enormous difference between the market the vaccine court was created to “protect” and the market today. In raw numbers there are nearly four times as many vaccine doses given each year to children than there were in 1986, even though the US population has only grown by 0.3 in that same time period.

Beginning in 1989, the US vaccine schedule quickly morphed from the one the vaccine court was created to support to a far larger schedule with more complexity. This isn't a coincidence; the vaccine court removed all liability from vaccine makers, greatly altering the risk/reward calculation in their favor.

When the court was established, the word “autism” was never even discussed. By the late 2000s autism almost brought the entire court, and the vaccine program, to a screeching halt.

## Changes Make It Nearly Impossible to Win Claims

Few people know that the vaccine court amended its rules in 1995 to make it harder to win a claim in vaccine court, largely due to the increasing number of claims made as the vaccine schedule became bloated. By revising its Vaccine Injury Table—a list of “accepted” injuries from various vaccines, the court quietly made the standard for proving a vaccine injury much higher. As one simple example, claims for DTP shots causing brain injury were paid on roughly 25 percent of filed cases before the 1995 changes and only 5.4 percent of cases after the changes were made, a decrease of more than 80 percent.<sup>7</sup> Testifying before Congress in 1999, Barbara Loe Fisher, the president of the National Vaccine Information Center, explained:

*The principal reason why the Vaccine Injury Compensation Program has become highly adversarial and is turning away three out of four claimants is that the Department of Health and Human Services (DHHS), with the assistance of the Department of Justice*

*(DOJ), has wielded its discretionary authority to all but eliminate a just list of compensable events in the Vaccine Injury Table, thereby destroying the guiding tenet of presumption.*<sup>8</sup>

Recognizing vaccine injury is no easy task; few doctors are able to recognize any of the signs. As I first mentioned in chapter 2, the United States has a vaccine injury reporting system called the Vaccine Adverse Event Reporting System (VAERS) database. Estimates are that VAERS captures roughly 1 percent of all vaccine injuries.<sup>9</sup> How many vaccine injuries actually make it into vaccine court? A fraction of a fraction of a fraction of 1 percent. (I can't find any accurate data, but the number is clearly tiny or the vaccine court would have exploded in size.)

The burden is on the parents to track "adverse events," despite the fact that pediatricians almost never explain all of the possible side effects. Parents might be told to expect redness at the injection site, swelling, maybe some fussiness or mild fever. Nothing some infant **Tylenol** can't fix.

Perusing the website of a vaccine court attorney today, you can see how strongly the decks are stacked against those injured by vaccines. Richard Gage & Associates, one of the top vaccine lawyers in the country, lets potential clients know that "obtaining compensation for a vaccine injury is a complex, sometimes extremely difficult process."<sup>10</sup> Parents of a child who received compensation shared their view about what the experience was like:

*DOJ [Department of Justice] attorneys were disrespectful and combative. . . . The Compensation Program should be about compensation and not about defense of the vaccine program.*<sup>11</sup>

A critical report from November 2014 about the vaccine court produced by the Government Accountability Office (a federal agency) found the court wasn't accomplishing what it had been purportedly created to do: to make vaccine injury compensation quick and fair.<sup>12</sup> The report noted that most claims take "multiple years to adjudicate" with 51 percent taking more than five years.

Parents who have filed claims in the court report that the compensation program has an "adversarial environment" and a statute of limitations (three years from the date of injuries being exhibited) that reduces the likelihood that parents can even file claims. This is far worse when it comes to autism, a condition that wasn't even contemplated when the court was created.

As Mr. Hazlehurst's memo further explains:



*The procedural "catch 22" of vaccine court works as follows. Under the Vaccine Act, before the parents of a vaccine-injured child may file a lawsuit in a court of law, they must first timely file a claim in vaccine court. However, the Vaccine Act has a 3-year statute of limitations, which begins to run upon the first symptom of injury. Under the CDC vaccine schedule children receive their first vaccinations either at birth or 2 months of age. However, in most cases, children are not diagnosed with autism until they are 3 or 4 years old. Therefore, by the time the child is diagnosed with autism, the statute of limitations has run in vaccine court and the parents are forever denied the right to proceed with a lawsuit in a court of law.<sup>13</sup>*

In a 1998 article for the *Washington Post*, journalist Arthur Allen criticized the changing standards of the vaccine court and explained the excruciating (and ultimately losing) journey of a family whose son had become extremely disabled from the DTP vaccine.<sup>14</sup> With the changes to the Vaccine Injury Table, Mr. Allen noted, "the burden of proof in most cases now lies with the petitioners, and that is a tricky business, because proof is an elusive matter in ailments of the brain." Mr. Allen caught the former medical director of the Vaccine Injury Compensation Program, Dr. Geoffrey Evans, in a vulnerable moment, explaining the true purpose of the vaccine court:

*there's a larger issue, too. They want parents to immunize their children, and for that they want the record to show that vaccines are safe. "I'm not going to say that awarding too many people will undermine vaccine safety, but I look on the Internet, and I see that our statistics are taken out of context," says [Dr. Geoffrey] Evans, the medical director of the compensation program.*

I want to highlight something Mr. Allen wrote above: "They want the record to show that vaccines are safe." Dr. Evans viewed his job as protecting the vaccine program, and he made it clear that awarding "too many people" for vaccine injury could very much "undermine" vaccine safety.

Why does this matter? Because shortly after Dr. Evans made this comment, the court was flooded with claims—claims from way "too many people" for something that no one had even discussed when the vaccine court was created in 1986: autism.

## **Omnibus Autism Proceeding (OAP)**

By 2002, four years after Mr. Allen's article in the *Washington Post*, the vaccine court was overwhelmed with hundreds of claims for autism, a previously rare disorder (at the

time) that was experiencing an explosive rise. Lawyers were warning the court that thousands more claims were headed their way. Chief Special Master (the head judge of the vaccine court) Gary Gronkiewicz, in response, issued an order in July of 2002 to address an “unusual situation” facing the court:<sup>15</sup>

*This situation arises out of concern in recent years that certain childhood vaccinations might be causing or contributing to an apparent increase in the diagnosis of a type of serious neurodevelopmental disorder known as “autism spectrum disorder,” or “autism” for short.*

The vaccine court’s solution for handling so many claims was complex, painstaking, and ultimately catastrophic for the families involved. In simple terms, the vaccine court took more than 5,500 claims from parents alleging vaccines caused their child’s autism and put them into a single group. Six “test cases,” which were later narrowed to three, were singled out from these 5,500 claims, and the results of the test cases would impact the totality of claims made in the court. Parents were given the choice to opt in to the Omnibus Proceeding, putting them at the mercy of the outcome of the test cases, or opt out and file a separate claim in the court themselves. Most decided to opt in.

Unfortunately, seven years passed between the formation of the OAP and the final judgment by the special masters, and in that time many special interests found ways to intervene and corrupt the proceedings, as Wayne Rohde explained in his 2014 book, *The Vaccine Court*:

*The OAP, for all the good intentions it was designed to achieve, quickly became a corrupt legal proceeding, all to accommodate the pharmaceutical industry, the medical community, and our government, instead of determining compensation for thousands of vaccine-injured children and the tens of thousands to come in the future.*<sup>16</sup>

As the attorneys representing the 5,500 claims began to organize themselves, the choice of test cases became incredibly important to the outcome of the proceedings, as well as the first opportunity to corrupt the legal proceedings.

## **Hannah Poling: The Unassailable Test Case**

As the lawyers representing the families sifted through the claims to find the perfect test cases to represent the Omnibus Proceeding, one case stood out for its robustness and defensibility: Hannah Poling, the daughter of Dr. Jon Poling of the world-renowned Kennedy Krieger Institute.

The government, however, had an advantage that would allow it to tilt the proceedings



in its favor: They could settle any claim from any family at any time, including the claims being put forth as possible “test cases.” The Department of Justice attorneys learned that Dr. Zimmerman believed Hannah Poling’s

autism had indeed been caused by her vaccines. On November 30, 2007, Dr. Zimmerman penned a two-page letter to the Polings' attorney, Clifford Shoemaker, explaining that with a "reasonable degree of medical certainty," he believed:

*The cause for regressive encephalopathy in Hannah at age 19 months was underlying mitochondrial dysfunction, exacerbated by vaccine-induced fever and immune stimulation that exceeded metabolic energy reserves. This acute expenditure of metabolic reserves led to permanent irreversible brain injury. Thus, if not for this event [her vaccinations], Hannah may have led a normal and productive life. Presently, I predict Hannah will have a normal lifespan but with significant lifelong disability.<sup>17</sup>*

Dr. Zimmerman's medical explanations, some of which made it into the public realm, have at times been twisted by vaccine proponents. Make no mistake: What Dr. Zimmerman is saying here is that vaccines caused Hannah's autism. His recent depositions make this clear.

## **Mitochondrial Disorders: Common or Not?**

I want to take a quick departure to explain "mitochondrial disorder." It's an abnormality in metabolism, and if a child has a **mitochondrial disorder**, her cellular energy level is low, and she is more at risk of having a vaccine pushing her over the edge and causing a bad reaction, including developing autism. A child with a mitochondrial disorder is at higher risk for an immune activation event after vaccination. Vaccine proponents desperately want to portray mitochondrial disorders as rare, but that's not the case, with the data showing that anywhere from 20 to 50 percent of children with autism have some type of mitochondrial disorder.<sup>18</sup> Worse, mitochondrial disorders are sometimes genetic but can also be caused by the toxins in the environment. So a healthy child could receive one load of vaccines and develop a mitochondrial disorder and then receive a second load and develop autism.

Mitochondrial disorder as a preexisting risk to regressive autism is what Hannah Poling taught the Kennedy Krieger doctors. Based on her data, they realized there is a "vulnerable subset" of children who regress into autism after vaccines because they have mitochondrial issues that may not be detected. Hannah's mitochondrial disorder, which her dad repeatedly explained to the press was not rare at all, was what vaccine proponents would use to try to confuse the issue, to the annoyance of Dr. Poling.

In 2006 a paper titled, "Developmental Regression and Mitochondrial Dysfunction in a Child with Autism" was published in the Journal of Child Neurology.<sup>19</sup> It was a case report of a single child, Hannah Poling, and it told her entire story. The authors? Dr. Jon Poling and Dr. Andrew Zimmerman. Reading the study, you realize how Dr. Zimmerman and others at the Kennedy Krieger Institute were able to change their minds about the vaccine-autism connection: Hannah's experience caused them to go back and revisit their clinical data, as they explain:

*The subtle laboratory abnormalities identified in this case led us to retrospectively evaluate the laboratory records of other patients with autism. Records from the Kennedy Krieger Institute between January 1995 and September 2002 were selected.*

This study received almost no publicity back in 2006, but part of its discussion was foreboding:

*Young children who have dysfunctional cellular energy metabolism therefore might be more prone to undergo autistic regression between 18 and 30 months of age if they also have infections or immunizations at the same time.*

What's important to recognize is that the Kennedy Krieger doctors came to their new point of view through careful research of their entire patient population of autistic children. Hannah Poling was the catalyst, not the basis, for their conclusions.

## **Twenty Million Dollars to Go Away**

In late 2007, with the Omnibus Proceeding well underway (a final ruling would be delivered in 2009) and with Hannah Poling's case officially presented as one of the three test cases for the OAP, the Justice Department lawyers did something that likely saved the vaccine court and the industry it exists to protect: they settled the Hannah Poling case and removed it from the OAP. As Dr. Jon Poling explained:

*We are obviously pleased with the HHS decision to concede our case, but we had NOTHING to do with the concession. This was a unilateral decision from HHS (recall that HHS is the respondent, rather than the vaccine maker, as manufacturers have blanket liability protection afforded by the Vaccine Injury Program established in 1986). I will not speculate on the obvious question—why concede? Hannah's case was positioned to set precedent as a test case in the Omnibus Autism Proceedings for potentially thousands of other cases.<sup>20</sup>*

HHS conceded the Poling case to save the vaccine industry and keep Dr. Zimmerman's opinion from becoming public. Imagine the national backlash that would have ensued if Americans had heard the truth on TV and in the media: Vaccines caused autism, and the US government paid to silence the family whose case proves it beyond doubt. Think back to the purpose of the vaccine court: to show that vaccines are safe. Hannah's case put that purpose at risk. Like most settled cases in vaccine court, Hannah's was settled confidentially (with a gag order on the family) in late 2007. Most of us would have never heard of Hannah Poling, if one of the attorneys representing the families hadn't leaked the settlement document to journalist David Kirby in early 2008.

It's absolutely mystifying to read the entirety of the Poling family's winning judgment. It's a step-by-step explanation for how a child regresses into autism through multiple vaccine appointments, replete with ongoing doctor visits, emergency room trips, and recurring loss of previously attained developmental milestones.<sup>21</sup> For an autism dad like me, it triggers a bad case of **PTSD**, with so many parallels to our experience with Jamison.

Like many children, Hannah "consistently met her developmental milestones during the first eighteen months of her life."<sup>22</sup> On July 19, 2000, Hannah received five vaccinations at one appointment (DTaP, Hib, MMR, Varivax, and IPV), and her mother, a trial attorney, reported that Hannah "developed a fever of 102.3 degrees two days after her immunizations and was lethargic, irritable, and cried for long periods of time." Twelve days after her vaccine appointment, Hannah "presented to the Pediatric Center with a 101–102 degree temperature, a diminished appetite, and small red dots on her chest." She was diagnosed by the emergency room staff with "a post-varicella vaccination rash."

The judgment continues with a seemingly endless list of trips to doctors and emergency rooms for ear infections, inconsolable crying, painful urination, bowel distress, and

many other physical problems. Finally, in February of 2001, roughly seven months after Hannah's fateful vaccine appointment, she received an autism diagnosis from Kennedy Krieger by Dr. Andrew Zimmerman himself, and he noted that Hannah had regressive **brain damage** after her vaccine appointment. And with tortured language reminiscent of President Clinton defending his infidelities, the vaccine court admitted that vaccines caused Hannah's autism:

*In sum, DVIC [Division of Vaccine Injury Compensation] has concluded that the facts of this case meet the statutory criteria for demonstrating that the vaccinations CHILD [Hannah Poling] received on July 19, 2000, significantly aggravated an underlying mitochondrial disorder, which predisposed her to deficits in cellular energy metabolism, and manifested as a regressive encephalopathy with features of autism spectrum disorder. Therefore, respondent recommends that compensation be awarded to petitioners.*<sup>23</sup>

Dr. Zimmerman's opinion had triggered the settlement in Hannah's case. Earlier, Dr. Zimmerman had provided a separate opinion about one of the other test cases, that of Michelle Cedillo. He felt that Michelle's autism had not been caused by vaccines, and a written memo he provided would be a primary reason that all three remaining test cases would lose in the Omnibus, impacting 5,500 families. No one knew that Dr. Zimmerman held a different opinion about Hannah Poling. Rolf Hazlehurst, in his memo to the US Congress, spelled out this hypocrisy:

*The government never intended for the American people to know about the Poling case and has fought hard to keep it under seal. By conceding the Poling case, the government prevented Dr. Andrew Zimmerman from taking the witness stand, in which case it could be shown that one expert witness provided two very different reports. The the first report was very publicly used against the petitioners [in the other test cases]. The second was used to compensate one child and in the process the government kept the evidence in her case under seal. The evidence placed under seal is strong evidence of how vaccines can cause autism.*

Mr. Hazlehurst was able to get the sealed details of the Hannah Poling case, which included the complete opinion of Dr. Zimmerman. He writes:

*The written opinion of the government's own expert witness in the field of neurology clearly reflects that he is of the opinion that the vaccines in question were a direct cause in the development of autism by Hannah Poling. Again, Poling v HHS would have been the fourth test case in the Omnibus Autism Proceeding if the government had not conceded the Poling case. The sealed evidence includes the expert opinion of the government's own expert witness, which explains how vaccines can cause autism.*

After Dr. Zimmerman gave his private opinion about Hannah Poling's case, he was effectively uninvited from being part of the vaccine court. He was never part of the actual Omnibus Autism Proceeding (beyond a memo he had written earlier), and he never had a chance to form an opinion about Yates Hazlehurst. He became a liability to the vaccine court.

## **Hannah Makes National News**

Hannah Poling's leaked case spurred the vaccine industry into damage-control mode, as Hannah's story led most mainstream news coverage for several nights, especially on CNN, right in the CDC's Atlanta backyard. Julie Gerberding, at the time the CDC's

director, appeared live, arguing, “the government has made absolutely no statement indicating that vaccines are a cause of autism. This does not represent anything other than a very specific situation and a very sad situation as far as the family of the affected child.”<sup>24</sup> The “spin,” of course, was that Hannah’s case was exceptionally rare.



That would be the spin time and again: Hannah’s case was unique, she had a “mitochondrial dysfunction,” it had no bearing on the larger debate about vaccines and autism. Dr. Jon Poling deemed it a complete mischaracterization of the facts, writing, “The only thing unique about my little girl’s case is the level of medical documentation—5 to 20% of patients with ASDs have mitochondrial dysfunction [a number today we know is higher].”<sup>25</sup> In an interview on CNN with Dr. Sanjay Gupta, Dr. Poling would make his case even more emphatically:

**Dr. Gupta: We’ve talked to a lot of experts about this, and they say that vaccines in no way cause autism. You’re a neurologist, you’re also the father of Hannah; what do you say?**

*Dr. Poling: The Department of Health and Human Services conceded that my daughter’s medical problems, which are autism, encephalopathy, **seizures**, were brought on by vaccination.*

**Dr. Gupta: But that’s startling for a lot of people to hear, because we’ve been taught for so long there’s so many good things about vaccines, but in your daughter’s case it turned out to be a problem?**

*Dr. Poling: I wouldn’t have believed it until it happened to me. As a doctor, until it happened to me, until I saw the regression, until I saw a normal 18-month-old toddler descend into autism, I wouldn’t have believed it was possible.*

**Dr. Gupta: The experts I’ve talked to, including the director of the CDC, Dr. Julie Gerberding, say, “that was a rare case, that is not likely to be the norm, that’s likely to be an exception.” What do you say to that?**

*Dr. Poling: Well, I think a lot of media outlets have put out a statement that says, “rare underlying genetic mitochondrial disease.” Now that’s five words. Four of those are not accurate in the sense that we know now—we didn’t know back in 2001—that mitochondrial dysfunction is not rare. Two, we don’t know if it was underlying or if something that developed later. The only correct word is mitochondrial.*

**Dr. Gupta: So what you believe is that Hannah did have some sort of predisposition and then vaccines tipped her over the edge into developing autism. What is your belief now?**

*Dr. Poling: Well, I don’t think vaccines are the only way that you can tip over a child like Hannah to regress and have an encephalopathy and regress into autism. There are*

*probably multiple triggers. In my daughter clearly it was vaccinations; that was our experience.*<sup>26</sup>

Writing for the *Huffington Post*, investigative journalist David Kirby echoed Dr. Poling, noting that “some reports estimate the rate of mitochondrial dysfunction in autism to be 20% or more. And the rate among children with the regressive sub-type of autism is likely higher still.”<sup>27</sup> What if mitochondrial dysfunction was the predisposition that made kids with autism particularly vulnerable to vaccines? As Mr. Kirby continued, “What’s needed most urgently, if possible, is a quick, affordable and efficient method of testing children for low cellular energy, perhaps before vaccination even begins.”

Mr. Kirby continued to press the case with HHS, trying to understand how many other Hannah Poling–like cases there might be hiding under seal. The doublespeak he received in a letter from David Bowman in the HHS’s office of communications played word games:

*The government has never compensated, nor has it ever been ordered to compensate, any case based on a determination that autism was actually caused by vaccines. We have compensated cases in which children exhibited an encephalopathy, or general brain disease. Encephalopathy may be accompanied by a medical progression of an array of symptoms including autistic behavior, autism, or seizures. Some children who have been compensated for vaccine injuries may have shown signs of autism before the decision to compensate, or may ultimately end up with autism or autistic symptoms, but we do not track cases on this basis.*<sup>28</sup>

Mr. Bowman is trying to be artful with semantics. Autism is not a diagnosis you receive based on a medical test, a gene test, or with any sort of lab report. It’s a behavioral diagnosis that has been relegated to the psychiatric back forty for decades. It is listed in the DSM, the Diagnostic and Statistical Manual of Mental Disorders.<sup>29</sup> There is no medical test for autism. Autism is a documented observation that a child has enough exhibited speech, language, and social impairment symptoms to qualify for a diagnosis. Therefore, someone with “regressive autistic symptoms” has autism. A child with an encephalopathy and “autistic behavior” has autism. When Hannah Poling suffered “regressive encephalopathy with features of autism disorder,” she had autism, which is her official diagnosis. What Mr. Bowman is really saying is that they have compensated vaccine injury cases of children who have autism as a result of their vaccine injury, but they will never say so directly, because that will scare the public. Soon after Mr. Bowman’s statement, this became even more evident.

## Mary Holland and Lou Conte



Soon after conceding Hannah’s case, the Omnibus court ruled against the roughly 5,500 families and exonerated vaccines as the cause of autism. For many parents the Omnibus ruling in February 2009 represented the final insult for their children: no government compensation for their child’s suffering.

Hannah Poling's case also caught the eye of two parents of children with autism: Mary Holland and Lou Conte. Ms. Holland is an NYU law professor, and Mr. Conte is the father of triplet boys, two of whom have autism; author of *Vaccine Injuries*; and (now) retired assistant commissioner in the Westchester County, New York, Department of Probations. They were intrigued by the Hannah Poling case and began to wonder if there was any truth to one of the vaccine court's "dirty secrets" exposed by Mr. Bowman's response to David Kirby. Some parents of children with autism who had chosen to sidestep the Omnibus proceedings knew the secret of the court: If you mention the word *autism* in your injury claim, you'll lose. Brain damage? Fine. Encephalopathy? No problem. Autism? No, vaccines don't cause autism; you lose.

Ms. Holland and Mr. Conte wondered, was the vaccine court compensating the families of autistic children, so long as they played along? What they learned was that maybe Hannah Poling's case was not so unique.

## Bailey Banks

Just one month after the Omnibus ruling against the 5,500 families, a leaked case in March of 2009 should have destroyed the CDC's position that Hannah Poling was an isolated case. In a clear ruling on the 2007 case of a ten-year-old autistic child named Bailey Banks, the vaccine court noted, "The MMR vaccine at issue actually caused the conditions from which Bailey suffered and continues to suffer."<sup>30</sup> The court found that Bailey's family proved that the **MMR vaccine** had caused a brain inflammation illness known as ADEM, which lead to his autism:

*The Court found that Bailey's ADEM was both caused-in-fact and proximately caused by his vaccination. It is well-understood that the vaccination at issue can cause ADEM, and the Court found, based upon a full reading and hearing of the pertinent facts in this case, that it did actually cause the ADEM. Furthermore, Bailey's ADEM was severe enough to cause lasting, residual damage, and retarded his developmental progress, which fits under the generalized heading of Pervasive Developmental Delay, or PDD [an autism spectrum disorder]. The Court found that Bailey would not have suffered this delay but for the administration of the MMR vaccine, and that this chain of causation was . . . a proximate sequence of cause and effect leading inexorably from vaccination to Pervasive Developmental Delay.*

So the vaccine court doesn't acknowledge that vaccines can cause autism—except when the vaccine court acknowledges that vaccines can cause autism. In the case of Bailey Banks, they were willing to recognize that his PDD (part of the autism spectrum) was caused by the MMR, perhaps because the case took place before the final Omnibus judgment. In the case of the Banks family, they had chosen not to join the OAP and to pursue their claim individually. This turned out to be a prudent move, as the awarded money would help provide for Bailey's lifelong needs. Writing about the Banks decision in 2009, David Kirby and Robert F. Kennedy Jr. took to the mainstream press in an op-ed for the Huffington Post:

*In many other successful cases, attorneys elected to steer clear of the hot button autism issue altogether and seek recovery instead for the underlying brain damage that caused their client's autism. . . . The vaccine court, in other words, seems quite willing to award millions of dollars in taxpayer funded compensation to vaccine-injured autistic children, so long as they don't have to call the injury by the loaded term "autism."<sup>31</sup>*

## Unanswered Questions

Joined by attorneys Robert Krakow and Lisa Colin, Ms. Holland and Mr. Conte went to work, asking a simple question, "Is the Vaccine Injury Compensation Program ('VICP') of the U.S. Court of Federal Claims a fair forum?"<sup>32</sup> They decided to conduct an investigation, and possibly publish a study, depending on what they found. They took direct aim at the Omnibus Proceeding:

*Are the cases of "autism" that the VICP [Vaccine Injury Compensation Program] rejected in the Omnibus Autism Proceeding really different from the cases of "encephalopathy" and "residual seizure disorder" that the VICP has compensated before and since? Is it possible the VICP rejected cases of "autism" because of the hot-button label and not because of real differences in injuries or evidence?*

Of course, they soon discovered what you probably have already deduced: that the court has in fact been compensating cases of autism called other things since the inception of the program. After digging through thousands of claims, many with sealed and confidential decisions that kept firm conclusions from being drawn, they were still able to find eighty-three cases of children with an autism diagnosis who had been compensated for "vaccine induced brain damage."

Holland and Conte began to compile their results in earnest. For a court that had recently reassured the world that vaccines don't cause autism, this was a devastating finding. Worse for the vaccine court, the study authors decided to include interview responses they received from some of the families who had received compensation from the court in their study. The study authors asked, "How is your child's life today?" Some of the responses follow:

"[She] is profoundly autistic. [She] is non-verbal, has major behavioral issues, is self-injurious . . . classic and very severe autism."

"[He] has no speech, no functional use of his hands. . . . He is not potty trained. He is very sensory defensive, flaps his hands, and makes moaning noises."

"[She] is a 'giant baby.' . . . She functions at the level of a 2-year old. . . . [She] has frequent periods of frustration, extreme rage, and self-injurious behavior."

Those are parental responses from just three of the eighty-three compensated children. The study authors also asked, "Was your child's claim resolved fairly?" One family responded, "No, it was a war." Another noted, "The attorney for the government was absolutely horrible. She was cold, insulting, and did whatever she could to keep us from getting compensated."

Keep in mind that these eighty-three cases were a fraction of compensated cases, the majority of which remain sealed and confidential to this day. There could be hundreds more; we just don't know. Discussing this report in their book *Vaccine Injuries*, the aforementioned Lou Conte and Tony Lyons explained that "despite requests filed under the Freedom of Information Act, the government blocked investigative access to the vast majority of cases."<sup>33</sup> Conte and Lyons also reached out to former vaccine court employees and reported on those findings:

*One retired employee stated emphatically that the development of autism in the presence of severe encephalopathy was understood by those in the program on both sides of the bar. . . . Another retired employee also confirmed that autism was seen as an indication of brain damage in vaccine injury.*

## A Bombshell Report

The study spearheaded by Ms. Holland and Mr. Conte was front-page news. Published in the spring of 2011 in the *Pace Environmental Law Review*, "Unanswered Questions from the Vaccine Injury Compensation Program: A Review of Compensated Cases of Vaccine-Induced Brain Injury" challenged the legitimacy of the vaccine court and showed that the courts had found, at least eighty-three times, that the medical standard for vaccines causing autism had been met. One report excerpt explained:

*It is notable that over a twenty-year period the VICP did not publicly acknowledge an apparent vaccine-encephalopathy-autism link. While in the early years of the program there might have been no particular attention to this association, certainly by the late 1990's, the question of vaccine injury and autism was one of general public interest. The findings of so many cases of autism among compensated cases calls into question HHS's assertions on the topic.*



Fox News broke the "bombshell report" on their May 16, 2011, nightly news broadcast. Lead reporter Alisyn Camerota noted that "the Feds have been quietly compensating children injured by vaccines; these are children who have autism. All of this despite the public denials."<sup>34</sup> Ms. Camerota explained she had interviewed one of the compensated parents, who told Fox News she had been told to stay quiet and that she feared losing the annuity she received from the government for her child's vaccine injury by publicly commenting. Ms. Camerota explained that the federal government had issued a statement in response to the study, affirming that vaccines don't cause autism. Finally, Ms. Holland appeared on screen and issued an eloquent rebuke of the federal government's public position:

*Remember that these case decisions that were compensated by the federal government were based on science. They had ample scientific and medical evidence before them. We rely on the fact that the government used the best science available to decide that these were cases of vaccine injury. What we've added to this debate, Alisyn, is that these kids have autism. In addition, there are an awful lot of kids whose families allege that they have autism and when they use that word, they didn't get compensation.*

Many of the families of the eighty-three children joined Ms. Holland and her coauthors in a public press conference on the steps of the vaccine court. They demanded a congressional investigation. They said the vaccine court isn't working. They explained the vaccine court's "dirty secret," that children with vaccine-induced autism are routinely compensated, meeting the vaccine court's high hurdle for proof, so long as they avoid the word autism. It was a bombshell, the kind of study published in a peer-reviewed law journal that on perhaps any other topic would produce an immediate congressional investigation, like the Flint drinking water crisis in 2016. Except it didn't.

## The Congressional Hearing That Almost Happened

In November 2013 the House of Representatives Oversight and Government Reform Committee's chairman, Representative Darrell Issa (R-CA) announced his committee's plans to hold a hearing about the National Vaccine Injury Compensation Program.<sup>35</sup> The pharmaceutical industry attacked the hearing with all its resources. Every Child By Two, a vaccine industry-funded advocacy group, circulated a letter to all members of Congress deriding the need for hearings.<sup>36</sup> Amy Pisani, director of Every Child By Two, asserted that the activists pushing for a hearing "have a long history of claiming that vaccines cause autism" and that "to dismantle the National Vaccine Injury Compensation Program in order to appease fringe groups that have had their day in court would be a great disservice to public health."

Had parents ever gotten their day in court? Mr. Hazlehurst, in his memo to the Government Reform committee, didn't think so. "In 1986, the United States Congress took away the American citizens' right to legitimately question vaccine safety in a court of law. Two of the most fundamental rights of an American, the right to a trial by jury and a trial under the rules of law were taken away," he wrote in his memo. "The Vaccine Act created a vaccine program which is an invitation for abuse of power. The Zimmerman issue [Dr. Zimmerman, his testimony sealed in the Hannah Poling case] is but one of many deeply disturbing actions which have occurred in the vaccine program. The actions of the United States Department of Health and Human Services and the United States Department of Justice during the Omnibus Autism Proceeding warrant an investigation by the Congress of the United States."

Despite the alarming and compelling evidence that the vaccine court was burying cases of vaccine-induced autism, Representative Issa blinked and "postponed" the 2013 scheduled hearing. Mr. Conte assessed the delay for the *Age of Autism* blog:

*The staffers [in the US Congress] that said that the hearing was postponed because this issue is so divisive were right. The hearing on the NVICP would have re-ignited the vaccine injury-autism controversy right smack in the middle of a Congress already beset with conflicts. Taking on the powerful pharmaceutical industry AND the federal public health establishment would be a daunting task. But the autism problem won't go away. It is certainly reasonable to believe that the passage of the 1986 Vaccine Act that started the NVICP also triggered the autism epidemic. Autism and the NVICP are intertwined and the program will never be viable until it opens the books and finally discloses the truth of vaccine injury.*<sup>37</sup>

As of the writing of this book, the hearings have never happened. But that's not where the story ends.

After the Omnibus loss, Rolf Hazlehurst reached out to Dr. Zimmerman. Remember that after the Polings's settlement, Dr. Zimmerman was effectively uninvited from serving as an expert witness in vaccine court. He was never part of the actual Omnibus Autism Proceeding (beyond a memo he had written earlier), and he never had a chance to form an opinion about Yates Hazlehurst.

Long before the Omnibus proceedings, in the early 2000s, however, Yates had been a patient at Kennedy Krieger. Dr. Zimmerman's team had learned many things in the ensuing years, and he was more than happy to look at Yates's medical records again with this new knowledge. What Dr. Zimmerman and his team found was a child who looked very much like Hannah Poling. The doctors found that Yates's test results showed that he, too, had a mitochondrial disorder that led to his regressive autism, and Dr. Zimmerman said he would share that opinion with anyone who asked. Dr. Richard

Kelley reached the same conclusions independently and also told the Hazlehurst family he'd be happy to support Yates.

As of the writing of this chapter (in mid-2018), Drs. Andrew Zimmerman and Richard Kelley are scheduled to testify in September in a civil suit brought on by the Hazlehurst family against the doctor who vaccinated Yates. Because they will be in a normal, open courtroom, we will all have the opportunity to hear from these experts when they take the witness stand.

For now, I'm one of a handful of people in the world who has copies of the depositions of Drs. Zimmerman<sup>38</sup> and Kelley<sup>39</sup>. So I know—and soon you will, too—that these depositions confirm their opinions that Yates Hazlehurst—remember, one of the original test case children in the OAP—had the same mitochondrial deficit that Hannah Poling had, and that vaccines caused his autism.

Had this information been in play back in 2009, the outcome of the OAP, and the current state of the autism epidemic, would be very different. The professional opinions of two of the most respected autism scientists (and, according to them, many of their colleagues) in the world affirm the whole point of this book: Vaccines can, and do, cause autism.

My biggest fear is that Yates's case will be settled before it goes to trial. I won't begrudge the Hazlehurst family, of course; they need money to care for Yates, who is nearly an adult now, and a settlement would mean money for Yates. But I'm hoping to see the vaccine-autism connection on trial, in a real courtroom, with Drs. Zimmerman and Kelley on the stand, telling the truth, in front of a real jury, with the same legal standard every drug is held to, except for vaccines. It could—it should—change this entire debate forever.

In a way, though, the trial itself doesn't really matter. The two doctors have already been deposed. They've said what they've said. The trial doesn't change any of that. We have their words, under oath, forever now. For that I'm grateful.

## **A Landmark Case: Yates Hazlehurst**

Yates Hazlehurst had a horrible reaction to his vaccines when he was six months old. His pediatrician should have identified Yates as a child who should never be vaccinated again. Instead, he was given a full load of vaccinations at twelve months of age, while sick and taking antibiotics, and he regressed into autism. Furthermore, Yates's pediatricians never informed the Hazlehurst family of the possible risks of vaccines, which is their responsibility. Without "informed consent" you have medical malpractice.

Those are the allegations from his father, Rolf, an assistant district attorney in the state of Tennessee. He's suing Yates's former pediatricians at the Jackson Clinic in Jackson, Tennessee, for medical malpractice. Because of the convoluted rules of the vaccine court, this is the first time in thirty years a vaccine injury case will be presented in a normal courtroom, and it's also the first time the question of whether vaccines cause autism will be litigated in front of a jury. Mr. Hazlehurst, a skilled prosecutor, has been navigating his son's case now for seventeen years and had to meet every complex hurdle of vaccine court before he could file a lawsuit in "open court." It's literally the only case in the world.

Yates's case already made national news in late 2016 when the Hazlehursts' attorney, Bryan Smith, in preparing for the trial, subpoenaed Dr. William Thompson, the CDC

scientist-turned-whistle-blower who confessed to the falsification of a 2004 study he coauthored denying a link between MMR vaccine and autism (discussed in chapter 3).<sup>40</sup> Dr. Thomas Frieden, at the time head of the CDC, successfully blocked Dr. Thompson from testifying, claiming in a letter to Mr. Smith, “Dr. William Thompson’s deposition testimony would not substantially promote the objectives of CDC or HHS [Health and Human Services].”<sup>41</sup>

I can only imagine how alarmed the Jackson Clinic’s defense team must have felt when they learned that Zimmerman and Kelley had agreed to testify as expert witnesses. As standard practice, the opposing counsel (along with Mr. Hazlehurst’s attorney) were given the opportunity to depose both Dr. Zimmerman and Dr. Kelley, which they did in late 2016. What follows are some of the more astonishing highlights from those two depositions.<sup>42</sup>

As an autism activist for more than a dozen years, reading these comments from two of the most respected autism scientists in the world gave me a huge boost of hope that the autism epidemic may actually be closer to ending than most people think. Read on: I’ll do my best to put all of their comments in proper context along the way.

## **Dr. Zimmerman on What Happened to Yates Hazlehurst**

**Lawyer: As succinctly as you can tell me, describe the opinions that you hold in this case.**

*Dr. Zimmerman: My opinion is that—that the Yates child—Yates Hazlehurst had a regressive onset of autism following administration of vaccines and at the same time he had an **ear infection**, both of which—both factors created inflammation and within 12 to 14 days after the immunization he began regressing. I saw Yates some years later in Baltimore County Krieger Institute and did some testing to look for signs of mitochondrial dysfunction. And these were later evaluated by Dr. Richard Kelley. And subsequently I did not see Yates for follow-up but learned that he was found to have a mitochondrial disorder. And it is my opinion that it is the underlying mitochondrial disorder that created the susceptibility factor in Yates that led to his autistic regression and change in brain function.*

One of the three test cases from the OAP, Yates Hazlehurst, has the same diagnosis as Hannah Poling. Again, if this had been known at the time, we might have seen much faster progress in ending the autism epidemic.

## **Dr. Kelley on the Percentage of Kids Who Have Autism Based on Mitochondrial Dysfunction**

**Lawyer: Would you say that you are an expert in mitochondrial dysfunction but not in autism? Would that be a fair way to describe it?**

*Dr. Kelley: I am an expert in mitochondrial disease. And I am an expert in the aspect of autism that pertains to the roughly 25, 30, 40 percent of children who have autism based on mitochondrial dysfunction.*

The leading expert in the country just said that between 25 and 40 percent of children with autism have mitochondrial dysfunction. So now we know that Hannah Poling and Yates Hazlehurst’s cases are not rare. Writing in the Atlanta Journal-Constitution back in 2008, Dr. Jon Poling made this point:

*Emerging evidence suggests that mitochondrial dysfunction may not be rare at all among children with autism. . . . In fact, mitochondrial dysfunction may be the most common medical condition associated with autism. . . . National public health leaders, including those at CDC, must now recognize the paradigm shift caused by this biological marker with regard to their current position of dispelling a vaccine-autism link. In light of the Hannah Poling concession, science must determine more precisely how large the mitochondrial autism subpopulation is.<sup>43</sup>*

## **Dr. Zimmerman on His Colleagues and the Poling Case**

**Lawyer: Do other people in your field, reputable physicians in your field, hold the opinion that vaccines can cause the type of inflammatory response that can lead to a regressive autism?**

*Dr. Zimmerman: Yes.*

**Lawyer: And you have been involved and testified in cases in the vaccine court?**

*Dr. Zimmerman: Yes.*

**Lawyer: And that theory has been accepted by the vaccine court in certain cases that have led to compensation of children who were injured as a result of a vaccine?**

*Dr. Zimmerman: The only one I'm aware of who was compensated was Poling, and I don't believe that actually went to court.*

**Lawyer: But actually the same theory that you have in this case was the same theory generally that you had in Poling?**

*Dr. Zimmerman: Correct.*

**Lawyer: And it's your understanding that Poling did receive compensation from the vaccine compensation program for a vaccine-related injury that led to autism?**

*Dr. Zimmerman: Yes.*

Can we just pause right here? Dr. Andrew Zimmerman, scientific titan in the field of autism and at the time a neurologist at Harvard Medical School, confirmed that his colleagues—reputable physicians in his field—share the opinion that vaccines can cause autism.

As it relates to Hannah Poling's case, Dr. Zimmerman confirms that she was awarded compensation because vaccines caused her autism without any of the CDC's qualifications about her case being "exceptionally rare."

## **Dr. Zimmerman on Vaccines, Inflammation, and Regression**

**Lawyer: There can be some type of triggering inflammatory response that can cause or lead to regressive autism?**

*Dr. Zimmerman: Correct.*

**Lawyer: And that science is accepted by the people in your field?**

*Dr. Zimmerman: Yes.*

**Lawyer: Other reputable physicians in your field?**

*Dr. Zimmerman: Right. People who work in the field of autism see, commonly see a relationship between infection, **inflammation**, and onset of regression.*

**Lawyer: And vaccines can cause the type of inflammatory response, in fact they're designed to—to cause the type of inflammatory response that can lead to or trigger a regressive autism?**

*Dr. Zimmerman: They're designed to lead to an immune response, and that may compound the immune response from an infection.*

**Lawyer: So in other words, kids who have this underlying mitochondrial disorder who are—have an ongoing infection are at an even higher risk of an injury from the vaccine?**

*Dr. Zimmerman: When combined, yes.*

**Lawyer: And as I understand it, sort of the key period or where a child's brain is more at risk for these types of, or is more susceptible to these types of risk is somewhere around a year to 18 months?**

*Dr. Zimmerman: Or 24 months, in that area.*

I need to make an important point. Dr. Zimmerman is a clinician. He sees children with autism every day. He diagnoses them, and he tries to help them get better. The "inflammatory response" he's talking about is the "immune activation event" Dr. Patterson from Caltech discovered. Dr. Patterson was a neuroscientist and a developmental biologist. They are using slightly different words, and looking through a slightly different lens, to describe the exact same phenomenon. Neurotoxicologists, another kind of scientist, study things like aluminum and macrophages to explain why immune activation events happen. The lenses are slightly different for these different kinds of scientists, but the stories all line up.

What Dr. Zimmerman confirms is that the leading scientists understand that immune activation events lead to autism. The only question left is how often those immune activation events are triggered by vaccines. Some of the time, most of the time, or all the time?

## **Dr. Zimmerman on Epidemiology at CDC and Prevention**

**Lawyer: How about the Centers for Disease Control? Its position is vaccines do not cause autism?**

*Dr. Zimmerman: Correct.*

**Lawyer: And [the CDC] is well respected?**

*Dr. Zimmerman: Of course.*

**Lawyer: And they do sound research and reach conclusions that are scientifically valid and sound in your judgment?**

*Dr. Zimmerman: Based on epidemiological studies in the past, but I think we are in a new era when a lot of research is being done now that helps us to understand the*

*underlying metabolic basis of autism, and I think this is going to change our approach to the problem.*

**Lawyer: But that hasn't happened yet, has it?**

*Dr. Zimmerman: It hasn't reached the epidemiological level at this point. We are in the midst of active research in this area and this is—I don't expect that it's going to change the overall picture of immunizations, but I expect that it is going to change the way we approach the problem.*

**Lawyer: Meaning what?**

*Dr. Zimmerman: Once we have the biomarkers for the patients who have susceptibility of regression following immunizations, it will change our approach to—to treatment of the children, to identify the children who are at risk.*

**Lawyer: So in your opinion, looking forward is, what you contemplate will happen, the change you see is the treatment of autistic children?**

*Dr. Zimmerman: I think it will change the treatment, but more importantly I think it will prevent the development of autism in quite a few children. Currently about 30 percent of children with autism undergo regression, and we would like very much to understand the metabolic basis for that and how we can prevent it.*

This is slightly confusing, and so important. What Dr. Zimmerman is saying is that the CDC's epidemiological studies lack the statistical power to find the vaccine-autism connection. I wish Dr. Zimmerman was better versed in the extreme inadequacy of these studies. He doesn't point out that only one vaccine (MMR) and one ingredient (**thimerosal**) have ever even been studied (see chapter 3), but what he does do is basically explain that no, the CDC isn't "lying" when they say vaccines don't cause autism; they're just basing their conclusions on studies that aren't designed to find a connection. Moreover, Dr. Zimmerman explains that the science continues to evolve and that the CDC's positions are outdated by the new science that he's seeing.

Dr. Zimmerman also makes one heartening comment and one explosive comment. He says the science is moving to identify children who may be at risk of regressing into autism if they are vaccinated, so that these children can be protected ahead of time. Also, he implies that perhaps 30 percent of children with autism have the same pro file as Hannah Poling and Yates Hazlehurst—not exactly rare.

## **Dr. Kelley Exposes the AAP and CDC Doublespeak**

**Lawyer: Do you agree with the statement that vaccines do not cause autism?**

*Dr. Kelley: No.*

**Lawyer: Is it generally accepted in the medical community that vaccines do not cause autism?**

*Dr. Kelley: It is a common opinion.*

**Lawyer: It is generally accepted in the medical field that vaccines do not cause autism?**

*Dr. Kelley: I have no basis to judge that. It is most often when physicians are commenting on that they say there is no proven association.*

**Lawyer: Do you know the position of the American Academy of Pediatrics about any link between vaccines and autism?**

*Dr. Kelley: Yes. They also say there is no proven association.*

**Lawyer: Do you agree with the position of the American Academy of Pediatrics?**

*Dr. Kelley: I agree with their position as a public health measure. I don't agree with it scientifically.*

**Lawyer: You are actually arguing for a link between vaccines and autism in this case, aren't you?**

*Dr. Kelley: I am.*

**Lawyer: And that is contrary to the medical literature, isn't it?**

*Dr. Kelley: It's not contrary to the medical literature that I read. It is contrary to certain published articles by very authoritative groups who say there is no proven association in large cohort studies.*

**Lawyer: Your opinion is contrary to, say, the opinion of the CDC, correct?**

*Dr. Kelley: It is contrary to their conclusion. It is not contrary to their data.*

My favorite quote here is, "It is contrary to their conclusion. It is not contrary to their data." He's making the point that the CDC does its best to frame its studies' conclusions in a certain way—which is always that vaccines are safe and effective—even if the data doesn't actually support it. Dr. Kelley, unfortunately, seems to think this dishonesty is justified as a "public health measure." I couldn't disagree more and will discuss this below.

## **Dr. Zimmerman on the AAP's Position on Vaccines and Autism**

**Lawyer: Tell me if you can identify this page, Doctor.**

*Dr. Zimmerman: This is from the American Academy of Pediatrics on vaccine safety.*

**Lawyer: And then down in the next paragraph it says, "Research has been conducted on all these topics, and the studies continue to find vaccines to be a safe and effective way to prevent serious diseases." Did I read [this] correctly?**

*Dr. Zimmerman: Yes.*

**Lawyer: And then it says here, "These studies do not show any link between autism and MMR, thimerosal, multiple vaccines given at once, fevers, or seizures. Did I read that correctly?"**

*Dr. Zimmerman: Yes.*

**Lawyer: And you agree with that, right?**

*Dr. Zimmerman: Yes, with the exception that these are epidemiological studies and do not incorporate our new knowledge at this point. This is the same point Dr. Kelley just made about the position the CDC has on vaccines and autism. He's not saying the CDC*

or AAP (of which he is a member) are lying when they say, "Vaccines do not cause autism." He's saying they are relying on awed and outdated science.

## **Dr. Kelley on the CDC and Dr. William Thompson**

**Lawyer: Is it your position that the Centers for Disease Control is somehow engaged in some kind of fraud with regard to its position on vaccines and autism?**

*Dr. Kelley: It has been reported. Dr. Thompson, a whistleblower, has said that.*

**Lawyer: I'm interested in whether you are going to take that position and express that view that the Centers for Disease Control is somehow guilty of fraud?**

*Dr. Kelley: I don't have an opinion to say. They are clever in how they publish data to avoid public attention that there is an association. But I can understand why they did that. It is a bit of a cover-up. But it was done for a good reason, so to speak.*

Okay, this drives me crazy. One of the things you see in the depositions of both Dr. Kelley and Dr. Zimmerman is that they really try to toe the line that vaccines are generally "safe and effective" and most children should get them. Dr. Kelley appears to be giving CDC a hall pass for playing with data, since it was "done for a good reason." The implication is that there is no reason good enough to risk the vaccine program. Ever. Even when autism is nearing 3 percent of our children. This is madness.

I appreciate that Dr. Kelley acknowledges that Dr. William Thompson, a CDC scientist-turned-whistle-blower, did allege fraud at CDC, but trust will keep eroding until public health officials tell the truth about the vaccine-autism connection.

## **Dr. Zimmerman on Children He Sees at Harvard**

**Lawyer: You actually see children in your clinic daily, weekly, with autism that has resulted from an underlying mitochondrial disorder?**

*Dr. Zimmerman: Yes.*

**Lawyer: And when you see those children, you go about trying to figure out what may have been the triggering event or the causative event of the regressive autism?**

*Dr. Zimmerman: Yes.*

**Lawyer: And in your practice you look at vaccines as one potential cause for a regressive autism in a child—for children like Yates?**

*Dr. Zimmerman: Potential, yes. And then we—we're trying very hard to treat them.*

Dr. Zimmerman confirms that vaccines are on the table as a possible cause of autism for all the children whom he sees. I also want to point out that in reading Dr. Zimmerman's entire deposition, I really saw his humanity, and his honesty. He sees these children every day. Unlike NeuroTribes' Steven Silberman, Dr. Zimmerman isn't romanticizing autism; he knows how devastating a disability it is, for the affected kids and their families. It's clear he wants to help these children recover, and to prevent children from developing regressive autism in the first place.

## Dr. Zimmerman on Epidemiological Studies versus Clinical Observations

**Lawyer: There is a difference between determining a causative link between, say, vaccines and regressive autism and epidemiological studies versus making a connection for a particular patient in a clinical setting?**

*Dr. Zimmerman: Very different approach.*

**Lawyer: Can you explain that a little bit?**

*Dr. Zimmerman: Well, an epidemiological study looks at a large group, but it may not be able to detect a small subgroup. And what we're really looking at is a different approach where we go—we start not from the large group but from the individual.*

I'm reminded here of a quote from the late Dr. Bernadine Healy, who used to run the prestigious National Institutes of Health. During the Hannah Poling media frenzy, Dr. Healy stood up and told the truth, and she was roundly criticized for it (of course) and labeled an "anti-vaxxer." What she said back in 2008 sounds just like what Dr. Zimmerman said:

*This is the time when we do have the opportunity to understand whether or not there are susceptible children, perhaps genetically, perhaps they have a metabolic issue, mitochondrial disorder, immunological issue, that makes them more susceptible to vaccines plural, or to one particular vaccine, or to a component of vaccine, like **mercury**. So we now, in these times, have to, I think, take another look at that hypothesis; not deny it. And I think we have the tools today that we didn't have ten years ago, that we didn't have twenty years ago, to try and tease that out and find out if indeed there is that susceptible group. Why is this important? A susceptible group does not mean that vaccines are not good. What a susceptible group will tell us is that maybe there is a group of individuals, or a group of children, that shouldn't have a particular vaccine or shouldn't have vaccine on the same schedule. I do not believe that if we identified a susceptibility group, if we identified a particular risk factor for vaccines, or if we found out that maybe they should be spread out a little longer, I do not believe the public would lose faith in vaccines.<sup>44</sup>*

Dr. Healy offered up so much common sense, and Dr. Zimmerman just said the same thing—there may be children who are more vulnerable to vaccines. Let's figure out who they are before they get vaccinated.

## Dr. Kelley on the Risks of Multiple Vaccines at Once

**Lawyer: You said you can't identify the specific vaccine that triggered, that led to the regressive autism, but the set of vaccines were the trigger?**

*Dr. Kelley: That is correct. In the sense that each vaccine creates some degree of inflammation. And one would interpret the events that there was a sufficient inflammatory event from the vaccinations all together that caused the deterioration. If one gave those vaccines individually over a period of a couple weeks, then it might not have been any event. It's the summation of the inflammatory response.*

I couldn't believe this exchange. The CDC and AAP have statements on their websites reassuring parents that multiple vaccines in one visit are perfectly safe, and here's a leading autism doctor saying the opposite. Here's a quote provided by the AAP:

*Current studies do not support the hypothesis that multiple vaccines overwhelm, weaken, or “use up” the immune system. On the contrary, young infants have an enormous capacity to respond to multiple vaccines, as well as to the many other challenges present in the environment.<sup>45</sup>*

## **Dr. Zimmerman on the Omnibus Autism Proceeding**

**Lawyer: It’s my understanding that you had written a report in that case [test case for Michelle Cedillo] and were set to testify but then were pulled by the US government after you told them that you believe that there were exceptions to the general rule?**

*Dr. Zimmerman: I don’t know if there was a connection between the two events, but that’s the way it happened temporally.*

**Lawyer: In other words, you told them that you felt that there were exceptions like Yates Hazlehurst and Hannah Poling, and other people that actually did have an injury due to vaccines and then after that you were pulled out of the case. Is that true?**

*Dr. Zimmerman: That’s the way it happened, yes. . . . And the reason I believe that I was not called to testify in the Cedillo case was that I told them that I think there are rare exceptions, like Poling, and therefore I was not asked to testify.*

It’s pretty clear what happened. Rather than face the implications of Dr. Zimmerman’s evolved understanding of the vaccine-autism link, they sent him packing but were more than happy to use his written testimony for their purposes. I’m not a lawyer, but if some or all of that isn’t fraud, then I don’t know what is. It’s a firm reminder that the vaccine court’s purpose is to protect the vaccine program, not end the autism epidemic.

## **My Thoughts about These Two Depositions**

The two depositions total more than 250 pages, and I’ve now read them several times. These are such important historical documents that I believe they will contribute to the end of the autism epidemic, and I have so many comments to make. First, I just want to say that I’m grateful to Drs. Zimmerman and Kelley for being honest, and for their willingness to let their comments be recorded for posterity. They both confirm that vaccines can trigger autism in certain vulnerable children. It’s really now just a matter of how many. Here’s what really struck me:

**My book could just be this one chapter.** If you still think all the hundreds of thousands of parents screaming that vaccines caused their kid’s autism are just at-earthers, or tinfoil hat wearers, or just looking for someone to blame, I can no longer help you. I just showed you the words—provided under oath—of two of the leading autism scientists in the world who were both key expert witnesses for the vaccine court’s lawyers, and they’ve just told you the truth and also said that many of their colleagues feel the same way. Vaccines cause autism in some kids. Period. Full stop. We’re just left to figure out how many kids.

**They treat regressive autism like a binary event.** Their view seems to be that vaccines tip some children into regressive autism, while other kids are spared. It’s sort of like they view it as a dodged bullet—it either lodges in your body or misses you completely, creating two stark outcomes. But that’s not actually what happens. We know vaccines also cause autoimmunity and many other issues in the body. And, what

about all the other neurological disorders that are epidemic in kids? Perhaps a mild reaction to all these vaccines manifests as ADHD, anxiety, or a learning disability? They don't see those kids in their clinics. They see autism. What if it's not black and white? What if there's severe injury or mild injury, but never no injury at all? Something that can trigger a disability as devastating as autism could well be responsible for smaller conditions, too, like a tornado that uproots some trees but can also pick up and move a house if the circumstances are right. In my estimation, a kid with **eczema**, a learning disability, and a deadly peanut allergy is also vaccine injured, just in a different way. If vaccines can push some kids into autism, as Drs. Zimmerman and Kelley clearly believe they can, doesn't that open the door for everything else?

**They're unwilling to consider that the original "mitochondrial dysfunction" might also be caused by vaccines.** Before Dr. Jon Poling disappeared from the public, I had the chance to talk with him a few times, back in 2008. He made it clear that he'd never know if Hannah's mitochondrial issues predated her first vaccines. Said differently, mitochondrial disorders may in fact be caused by the first vaccines a child receives, and then later rounds push them into autism. This is never discussed by Drs. Zimmerman and Kelley; perhaps it's just too big to consider.

Maybe some of the kids who don't have an obvious regression got tipped into autism much earlier in their lives, like after their two-month appointment rather than their twelve-month appointment. We really have no idea. They also never discuss maternal vaccines during gestation, even though that was Dr. Paul Patterson's original concern. What if a child "born with autism" is simply the victim of a vaccine the mother received?

**Drs. Zimmerman and Kelley are not toxicologists.** They don't understand things like the "biopersistence" of aluminum and the way it hangs out in the brain. They don't discuss the fact that it's the aluminum actually generating the inflammation, which is the whole purpose for aluminum, or that once it's done doing that it just sits there in the brain. That's not how they look at the world. They don't ever mention Dr. Pardo-Villamizar's work that found autism brains in a simmering, permanent state of inflammation. Aluminum has so many downstream consequences for the body.

This is one of the limitations of dealing with the scientific community that I find frustrating. People like Dr. Christopher Exley and Dr. Christopher Shaw don't spend time with people like Dr. Zimmerman to create a more holistic view of how autism is being created. We now know that the tiny injections of **aluminum**, given time and again, can be devastating to the developing brain. Dr. Kelley, in particular, is really focused on what happens during the twelve-month vaccine appointments, but for most American children, that's actually their fifth vaccine appointment (birth, two-month, four-month, six-month are the first four). What if a child is already suffering from previous toxicity? It's just not something they are looking at.

**Drs. Zimmerman and Kelley really try to remain steadfastly pro-vaccine.** I'm frustrated by this. Dr. Kelley even gives his patients an anti-inflammatory (montelukast) before he vaccinates them, if he thinks they are "at risk." He believes this reduces the likelihood the at-risk child will tip into autism. He's basically using a pharmaceutical drug to suppress an immune activation event for a medical procedure whose purpose is immune activation. Doesn't that seem a little crazy?

They never mention delaying vaccines, spacing them out, or not giving some of the less important vaccines, like hep B, influenza, varicella, or rotavirus. They are trying very hard to tow the party line; all of their ideas are for how to identify vulnerable kids prior

to vaccination. This is a noble pursuit, for sure, and I applaud it, but I think you need to come at this problem from both sides: Identify the vulnerable children, and make the vaccine schedule way, way safer, and smaller. This is a topic they clearly will not touch.

Dr. Kelley makes a revealing comment when he mentions a special master (of the vaccine court) who was very concerned about any inference at all that vaccines could cause autism, because of the effect the message could have on parental behavior. Who needs truth when you have a vaccine program to implement? I'm even more disturbed by Dr. Kelley's comments about how the CDC misrepresents the data for "public health reasons" so that makes it okay. No, it doesn't. Lying is lying, and when the truth finally seeps out, as it's doing, the destroyed trust will be far more difficult to repair.

**They never criticize the narrowness of the studies CDC, AAP, and IOM rely on to declare "vaccines don't cause autism."** Both doctors clarify that the conclusions of CDC, AAP, and IOM are based on large-scale epidemiology that wouldn't find a vulnerable subset of children, because large-scale studies typically miss these kids. But they never mention that these studies also only looked at a single vaccine (MMR) and a single ingredient (thimerosal). They perpetuate the myth that vaccines and autism have been studied, when they really haven't been. Given their training, expertise, experience, authority, and power, I hold them—I think quite reasonably—to a higher standard to understand the science.

**Finally, we really have no idea how many of the children with autism got that way due to their vaccines.** I've heard that 50 percent or more of autism parents blame vaccines. My son's story is almost exactly like the stories of Yates Hazlehurst and Hannah Poling. Ear infections, illness, antibiotics, and obvious vaccine reactions kept happening to him until he finally disappeared. My pediatricians were every bit as careless as the ones at the Jackson Clinic. The thing is, most of the autism parents I know, and I know a lot, have the same story. Not all, but certainly most—thousands of parents I've heard from directly.

The thing I do is, I turn back the clock to the old autism numbers. I look at the one in ten thousand number from Wisconsin in the 1970s that was so accurately and thoroughly derived. Where the hell have all these kids come from, and why do so many parents blame vaccines? One in thirty-six kids is insanity. "Vaccines" is far and away the most biologically plausible explanation for what has happened. There is no such thing as a genetic epidemic, and the few studies of 100 percent unvaccinated kids show dramatically lower numbers of neurological disorders. It adds up. It's not if vaccines cause autism, it's how many of the cases? And therefore, how many cases do we know we can prevent? Dr. Kelley actually helps us here. He at least estimates that 25 to 50 percent of kids with autism have mitochondrial dysfunction, which means all those kids are at risk for vaccine-induced regression. As I said earlier, the way these two doctors look at the world misses many kids who are injured by vaccine in year one of their lives, so I think the number is far higher than 50 percent of kids with autism who got it because of vaccines, but no one knows for sure.

**Even with my criticisms, I consider these two doctors to be heroes who have taken extraordinary risk by telling the truth.** I've asked Rolf Hazlehurst this question, "How the hell can these guys be helping you? Don't they realize how serious this is? How much they could destroy their careers? A 'Wakefielding' is surely headed their way soon, no?" Rolf thinks they are high-integrity scientists and that when asked, they tell the truth. They go where the facts take them. And they have empathy. They

see kids with autism every day. Autism is not a mild disability. They want to prevent kids from regressing into autism. The only way they can do that is by telling the truth about what is causing at least some of the cases. Rolf also thinks age is an issue, with both scientists in their 70s. Regarding Dr. Zimmerman, Rolf tells me, "I think he wants to set the record straight before he dies."

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