

1 sufficiently disruptive. I didn't see this head shaking
2 thing that's been reported. I don't think it's sufficiently
3 disruptive or improper to incur that kind of a warning, and
4 I would object to it as being intimidating to the witness.
5 To that end, for the record, I would object to it.
6 Obviously I'm an officer of the court, and I will obey the
7 Court's instructions.

8 THE COURT: I understand you will whether you
9 agree with them or not. I don't think when I see a pattern
10 of conduct or when any judge sees a pattern of conduct that
11 appears too often to be dismissed as unconscious, or
12 unintentional, that that judge can let it pass. When it is
13 not possibly physically disrupting of a court proceeding,
14 but when it is of such a nature as far as points being
15 testified to or timing, or at an important point as far as
16 the context of the trial itself, I don't think that a court
17 has to wait for an actual disruption of proceedings in order
18 to take these actions.

19 A court order is a court order, whether it's
20 something that the violation of which is disruptive or the
21 violation of which is consistent, not necessarily disruptive
22 of proceedings, but is a consistent, obvious, at least
23 arguably wilful course of conduct where this type of
24 reaction by the Court should be taken. We're only supposed

1 to give orders under certain circumstances after due
2 consideration, but we have the duty to see that our orders
3 are complied with.

4 I think that we are -- he has been admonished by
5 experienced counsel as to what to do and not to do. I think
6 we're getting into that second stage where we have to make
7 sure these orders are complied with. I don't think I have
8 to wait for an actual disruption.

9 Having observed this individual for close to two
10 and a half days, having seen the manner of which he's
11 handled himself on the witness stand, and the manner in
12 which he's answered questions, I doubt very much whether any
13 of us are going to be able to intimidate him from doing what
14 he wants to do as far as his testimony is concerned, or
15 anything else.

16 He is obviously a very strong individual. I am
17 not trying to intimidate him or keep him from testifying as
18 he wants to testify. He does, however, in the course of
19 that testimony have to comply with some basic rules of the
20 courts in the state of Illinois. At this point in time he
21 does not appear to be complying with them. I am going to
22 give him one more chance to comply by ordering that by
23 advice of experienced counsel as to what compliance means.

24 There's no way in the world that your admonishment

1 of him, in your advising him of what I said is going to be
2 intimidating to this man. That won't happen. He's not that
3 type. He's not easily intimidated, and my intention is not
4 to intimidate him, and that will not be the effect.

5 Mr. Carr, you may proceed on your objection.

6 MR. CARR: I think my objection was, has been
7 fully stated, your Honor, is that Counsel's question is
8 misleading to the jury because the record after it was
9 finally straightened out, clearly shows, and there is no
10 doubt about it in Counsel's mind or anybody else's mind,
11 because he's taken the depositions of Ferguson, had full
12 material produced, and Counsel well knows that the documents
13 he handed to the witness, 921 and 1472, is material that was
14 generated from the computer tapes and was not material that
15 was given to us by Monsanto or by Suskind as the question
16 implied.

17 MR. HEINEMAN: No.

18 THE COURT: Do you have anything final you want to
19 say?

20 MR. HEINEMAN: The question didn't imply that. The
21 question was whether or not those documents were Suskind
22 documents, were documents that had been produced by
23 Suskind --

24 MR. CARR: Wait a minute. I didn't object to

1 that. It was when you added the part to it suggesting to
2 the witness that these documents were not generated from the
3 computer tapes given by Suskind. That's the point of my
4 objection, Counsel.

5 We have agreed, and there is no dispute, these
6 documents were not produced by Suskind. They are not
7 Suskind documents. These are documents that had been
8 produced from computer tapes given by Suskind under order of
9 court to Dr. Carnow. He obviously has to put those computer
10 tapes in a computer and feed codes to it, and get the
11 information that the computer tapes are not readable without
12 putting them in a computer and getting print-outs, as you
13 well know.

14 MR. HEINEMAN: The statement was made to Dr.
15 Roush, and in court by Mr. Carr, that that 1427 is a Dr.
16 Suskind document.

17 MR. CARR: Counsel, we know that was done to start
18 with, because that's the information that was given at the
19 time, but later on the record will clearly show that it was
20 straightened out and that these were documents that were
21 generated from computer tapes. So let's not play games on
22 that. You know that's exactly what the record says.

23 MR. HEINEMAN: The last statement that Mr. Carr
24 made on the subject was this document was not created by me.

1 The only thing that was created by the people in my employ
2 was the handwritten portion. The typed portion is a print-
3 out from the computer tape given and described in that
4 letter, given to us to be used in analyzing these data.

5 MR. CARR: Exactly right. That is exactly the
6 fact.

7 MR. HEINEMAN: The fact is that that was created,
8 print-out, that that is the result of introducing different
9 variables and different means of organizing the data --

10 MR. CARR: Counsel, if you want to bring out with
11 a witness, and I won't object to it, that the user of the
12 tapes used different variables and put in different analyses
13 and analyzed it from a different viewpoint, I will not
14 object to that. My objection is your suggestion to the
15 witness that this material was not computer print-outs based
16 upon or taken from or with utilization of the computer
17 tapes. Just exactly as I said in that last statement --

18 THE COURT: If I remember correctly, what you just
19 said about the different analyses to everything that was
20 testified to somewhere in the course of that.

21 MR. CARR: It was, your Honor.

22 THE COURT: When Roush or someone was on the
23 stand. I'll sustain the objection. You can go into that
24 area. I remember that being testified to when this original

1 thing came up with Dr. Roush. So I will sustain the
2 objection, and I think you can go into that area also.

3 Let's take a break ourselves and then go back in.

4
5 (Short recess.)

6
7 (The following proceedings were had in the
8 presence and hearing of the jury:)

9
10 Q (By Mr. Heineman) Dr. Suskind, if I can ask you
11 to refer again to Defendant's Exhibit 921, sir, which is the
12 computer print-out you were looking at before. Are you
13 aware, sir, of who generated that document?

14 A I believe that this document was generated at the
15 request of Conibear and Carnow for the trial in Charleston,
16 and the individual responsible for programming it at their
17 request was a Mr. Ferguson.

18 Q Now, are there any differences, sir, in Exhibit
19 921 as compared to the computer analysis created by your
20 office?

21 A I think there are some very substantial
22 differences. I think one has to realize that if one has a
23 data bank, a bank of information which is in a computer, you
24 start out by asking the computer questions when you want to

1 analyze that data. The questions are really called a
2 program. The program that was used to elicit the data. The
3 information which appears in 1427 was very different from
4 the computer program that we used. Naturally, you would get
5 somewhat different answers, depending upon the categories of
6 questions you ask and how you ask them. I can cite an
7 example, if you wish.

8 Q All right. Would you please.

9 A And I think that the problem relates to, as it
10 does, in 1472 relates to cancer. How many of these people
11 have had cancer. Well, when we asked the question, we had
12 several categories of cancer, and we wanted to make sure
13 that we differentiated tumors.

14 Tumors, as I said earlier, simply means a swelling
15 in an organ system or a swelling in the skin and it can be a
16 cyst, it can be a polyp, like President Reagan had, which
17 was benign. It could be a polyp in the nose, which can be
18 benign. That's a tumor.

19 And we separated tumors and the variety of tumors
20 from cancers. We used, as I said earlier, we used a SNO-Med
21 classification of all diseases, including cancers and
22 tumors, so that what we asked for was where was it, what
23 organ system, the type of tumor or cancer, and when we put
24 the figures together we had a print-out for tumors of each

1 category, of each organ system, so we knew how many tumors
2 there were, and we knew how many cancers there were, and
3 what organ system was affected.

4 In the programming for 1472, which is cited in
5 Defendant's Exhibit 921, there was simply three questions
6 asked, pull out the skin cancers, pull out the bladder
7 tumors, and pull out bladder cancers -- sorry, bladder
8 cancers, and pull out cancers of all other sites. So they
9 had three categories.

10 Of course, the kinds of information that they got
11 out of that, especially because they lumped tumors with
12 cancers, which pathologically and medically is erroneous,
13 they got wrong answers, wrong answers from our standpoint
14 and wrong answers from a reasonable medical standpoint.
15 So that -- you know, if you want me to cite a few of these.

16 Mr. Volz, for example, who had a basal cell
17 epithelioma, which we picked up, and a bladder tumor, he
18 never had a bladder cancer, so that he should be in the
19 tumor category rather than the bladder cancer. He didn't
20 have a cancer.

21 Another one was a man named Waldorf. You ask
22 yourself well, when did he have a skin cancer, and he had it
23 in 1944. So he shouldn't be included in the people with
24 skin cancer among the exposed because it occurred in 1944,

1 if you're attempting to relate exposure to skin cancer.

2 There's another problem, and that is when you --
3 we counted -- in our print-out we counted people that had
4 cancers, people that had cancers. There was at least one
5 individual who we knew had prostate cancer. We knew
6 eventually that he had leukemia. We counted that as one
7 person with cancer. In this print-out it's two cancers, two
8 people with cancers. It's not. It's one person with
9 cancer.

10 These are some of the things I think have to be
11 pointed out. There are some other rather obvious problems
12 with this, and if you'd like me to go on, I can.

13 Q Well, Dr. Suskind, the SNO-Med or the SNO-Med
14 classification, is that something that is yours alone?

15 A No. As I indicated earlier in my testimony, SNO-
16 Med is a classification of diseases, which is used
17 internationally by medical record keeping groups like
18 hospitals, places that have to make diagnoses of diseases.

19 The SNO-Med has nothing to do with what happened
20 this morning in our environment. It's Systemitized
21 Nomenclature of Medicine. The abbreviation is SNO-Med. It
22 was originally, after many international conferences about
23 it, the American College of Pathologists issued a two volume
24 document on classification of diseases. It's used

1 internationally. We used it in order to classify both
2 history of diseases, as well as findings.

3 Q When you made available computer data, the
4 computer tape in the Nitro litigation, did you make
5 available the SNO-Med key that you used?

6 A Yes, we did. We were asked for it, and we sent
7 it, and I believe Dr. Carnow received the SNO-Med, so if he
8 wanted to use it he could.

9 Q When you analyzed skin cancer, sir, did you make
10 plenty adjustment for age?

11 A When we analyzed a history of skin cancers --

12 Q Yes, sir.

13 A -- we, knowing I'm a dermatologist and I've seen a
14 lot of skin cancers I know that age is a terribly important
15 factor, so that we wanted to see whether there was any
16 difference in the occurrence of skin cancer with age, so
17 that we separated the group 50 and over from those below 50
18 years old, and the paper indicates what those results were.

19 For example, we found that the skin cancers were
20 age related, not exposure related. They were age related,
21 not exposure related. We found, for example, among the
22 exposed, under 50 years old, under 50 years old, nobody had
23 skin cancer in our group. Nobody had a history of skin
24 cancer. Among the not exposed there was one percent had a

1 history of skin cancer.

2 In the above 50 years old there were literally the
3 same percentage of people in the exposed and the not exposed
4 group that had skin cancer. Five point three percent among
5 the exposed and four point eight among the not exposed.
6 That's not -- that's no difference.

7 Q What does that indicate?

8 A So it indicates that in this study, in the
9 population -- among the population exposed and not exposed,
10 exposure was not a factor in determining association. There
11 was no association with exposure, but there was a clear cut
12 association with age.

13 Q If you look at Defendant's Exhibit 921, the
14 Carnow-Conibear print-out, does it contain any commands for
15 conversations with the computer?

16 A Oh, it contains a substantial number of commands
17 to the computer, and with respect to cancer I've already
18 indicated what those commands were.

19 Q Can you tell from looking at Exhibit 921 whether
20 the computer was commanded or questioned by the Carnow-
21 Conibear organization regarding age separations in the
22 group?

23 A Yes, there was a command which indicated they
24 would like to determine, because I think what they were

1 trying to do, according to Mr. Ferguson, was to reproduce
2 our results. So they also made age a variable.

3 Q All right.

4 A However, I don't see any of those results in the
5 print-out, so that I have no idea whether they ever did any
6 age examination of the skin cancer data.

7 Q In other words --

8 MR. CARR: I object, your Honor, leading,
9 suggestive.

10 THE COURT: Could you rephrase it, please.

11 Q (By Mr. Heineman) Is there any age analysis
12 contained in the data analysis portion of that Carnow-
13 Conibear print-out?

14 A If Plaintiff's Exhibit 1472 is what came out as a
15 result of the command to elicit the information regarding
16 cancer, there's no variable in here with respect to age.

17 Q Dr. Suskind --

18
19 (Defendant Monsanto's Exhibit 1708 was marked
20 for identification by the court reporter.)

21

22 Q (By Mr. Heineman) Doctor, I'd like to show you
23 Defendant's Exhibit 1708, sir, which is a copy of
24 Plaintiff's Exhibit 1473. All right, sir.

1 A Yes, sir.

2 Q Have you seen this document before, this 1473?

3 A Yes, I have.

4 Q All right, sir. And I wonder if, do you agree
5 with what's contained in this exhibit?

6 A May I go up there?

7 THE COURT: Yes, you may.

8 THE WITNESS: It reads Suskind Human Health
9 Effects of 2,4,5-T, Journal of the American Medical
10 Association, 1984, which essentially refers to the article
11 published in the Journal of the American Medical
12 Association, and it says -- it reads cancers reported to
13 Suskind by Nitro workers exposed to 2,4,5-T.

14 Now that's not so. That is absolutely not so.
15 It's false. It's erroneous because that isn't how it was
16 reported to us.

17 That is the result of that print-out, and the
18 interpretation of the print-out, and I've pointed out some
19 of the errors that were made with respect to date, some of
20 the errors that were made with confusing tumors with cancer.
21 There are others. But I think that what comes out of here
22 is simply an erroneous interpretation because the data
23 analysis was erroneous.

24 For example, let's take Mr. McDade. It is alleged

1 that he was among the exposed and we left him out. Well, as
2 a matter of fact, according to the physician, and we took
3 the physician's history as being the most significant
4 history --

5 MR. CARR: Your Honor, I would object, unless the
6 witness makes it clear that it's the physician's report that
7 he took and that he has, and presumably been given to us in
8 writing.

9 THE COURT: Could the two of you approach the
10 bench for a minute, please.

11
12 (The following proceedings were had at the bench
13 out of the hearing of the jury:)

14
15 THE COURT: Would you refresh my recollection on
16 the basis of your objection.

17 MR. CARR: Yes. We asked for all of the records
18 that Suskind had which he used to prepare this morbidity
19 study. We asked for all the records, all the history, all
20 the written documents, everything that pertains to these
21 people that were the subject of it.

22 Now if he is referring to one of those documents
23 that was given to us, I don't object. But it's not clear
24 from what he's saying whether he was told by a physician and

1 not in writing. He may be referring to something that
2 somebody told him and that we don't have any memo or record
3 of. That's the basis of my objection.

4 MR. HEINEMAN: The fact of the matter is, your
5 Honor, I believe he is referring to the physician portion of
6 the Nitro form that he just identified.

7 THE COURT: Why don't you clarify that then.

8 MR. HEINEMAN: The fact of the matter is, though,
9 that even if he weren't, he could certainly take into
10 account in giving his expert opinion information he had
11 obtained from that physician orally.

12 MR. CARR: He could arrive at an opinion, as we've
13 been through this a dozen times before, he couldn't relate
14 what, in fact, has been told him.

15 THE COURT: Especially when it doesn't happen to
16 be the case in this particular situation. Why don't you ask
17 another question to clarify that.

18
19 (The following proceedings were had in the
20 presence and hearing of the jury:)

21
22 Q (By Mr. Heineman) Now, Dr. Suskind, first of all,
23 the information which you obtained from physicians that you
24 said you relied on, where is that information set forth?

1 A That is set forth in the physician's examination
2 page, and if you'd like me to refer to that from the
3 interview and the examination record, I can.

4 Q But is it part of the form which you identified
5 previously?

6 A Yes, it is.

7 Q All right. Which is Defendant's Exhibit 1704.

8 A If I may, I can show you where it is. If I may,
9 your Honor.

10 THE COURT: Go ahead.

11 THE WITNESS: It's on page 21 of the record, and
12 the physician's responsibility was to take additional
13 history, additional history and review of systems. So he
14 took a history of skin problems, including acne, other skin
15 abnormalities, nails, and cancer, so that he asked about it,
16 asked about problems of the ear, nose and throat. He asked
17 about problems of the teeth, tissue.

18 He went through as most physicians will do in an
19 interview, will take a history of possible problems of the
20 eyes, of the lymph nodes, of the pulmonary system, of the
21 heart. But among them, whether or not the individual had a
22 history of a tumor or a cancer in those organ systems.

23 Q All right, sir. Now in connection with
24 Defendant's Exhibit 1708, you were discussing Mr. McDade.

1 A McDade.

2 Q McDade. And you wrote a word on here.

3 A Yes. I indicated that according to the
4 physician's history this man had a skin tumor. A skin tumor
5 can be a epithelioma, it can be a mole, which is swollen.
6 Tumor means swelling. These can be benign. So that in the
7 physician's opinion, this man from his history had at one
8 time a skin tumor, which was removed. So we classified it
9 as a tumor, not a cancer.

10 We've already talked about Mr. Volz. Mr. Volz'
11 skin cancer was classified as a basal cell epithelioma. Mr.
12 Volz didn't have a bladder cancer. He had a tumor. From
13 what we know about it, it was a benign tumor.

14 This man, as I indicated, did have prostate --
15 history of prostate cancer, and he did have a high blood
16 count when we saw him, so we had evidence of leukemia even
17 when we examined him. He is called two cancers. He's a
18 person with cancer.

19 We counted noses. We didn't count numbers of
20 cancer.

21 There was another problem, for example, there are
22 three people who are indicated as having cancer and we left
23 them out of the exposed group. By no stretch of the
24 imagination from the records that we gave to Ferguson's

1 analysis were these people exposed.

2 Mr. Rogers, Roy Rogers, had skin cancer. We
3 picked it up. But it's in that table among the non exposed.

4 Mr. Garell, the same thing. He's a non-exposed
5 individual. He is in the table as well.

6 Then there's -- let's see, we have Mr. Reynolds.
7 Mr. Reynolds had a bladder cancer. It is recorded as
8 bladder cancer in the non-exposed. And to add these is
9 simply misinforming about who was exposed and had cancer and
10 who was not exposed and had cancer.

11 Q Dr. Suskind, at the bottom of the table are the
12 words omitted from Table 1 with a double asterisk. Do you
13 see that?

14 A They were. They were omitted -- they were omitted
15 in the exposed because they weren't exposed. But they were
16 in the group that was non-exposed.

17 There were two individuals that the physician did
18 not pick up and that was Mr. Postelwaite and Mr. West,
19 Lowell West. So that if you add those to the people whom we
20 regarded as having skin cancer, you have essentially two
21 more people.

22 However, one asks -- one asks does that change the
23 significance of the results. Does that change the
24 statistical significance of the results between the exposed